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In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, APPELLANT

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The opinions of the district court (Apps. B and C, *infra*, pp. 2a, 9a) are not reported.

JURISDICTION

The order of the three-judge district court denying the United States' application for an injunction under Section 5 of the Voting Rights Act of 1965, as

amended, 42 U.S.C. 1973c, and dismissing the complaint, was entered on December 13, 1976 (App. D, *infra*, p. 20a). The district court's order denying the United States' motion for reconsideration was entered on March 31, 1977 (App. A, *infra*, p. 1a).

The United States filed a notice of appeal on May 11, 1977 (App. E, *infra*, p. 22a). The jurisdiction of this Court rests on 42 U.S.C. 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections*, 393 U.S. 544, 560-563; *Perkins* v. *Matthews*, 400 U.S. 379.

QUESTIONS PRESENTED

1. Whether voting changes enacted by a city which is within a state designated for coverage under Section 4 of the Voting Rights Act of 1965 must be precleared under Section 5 of the Act before they may become effective.

2. If so, whether the Attorney General's decision to interpose no objection to a referendum in which the voters of Sheffield, Alabama, decided to change from a commission to a mayor-council form of municipal government constituted clearance of the method by which city councilmen were to be elected.

STATUTES INVOLVED

Sections 4, 5, and 14(c)(2) of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U.S.C. (Supp. V) 1973b, 1973c, and 1973*l*(c)(2), respectively, are set forth in the Appendix F, *infra*, pp. 23a-29a.

STATEMENT

Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c, provides: "Whenever a State or political subdivision [covered under Section 4 of the Act] shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 * * *"[1] the change has no effect as law unless "such State or subdivision" obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the effect of denying or abridging the right to vote on account of race or color. Alternatively, the change may be enforced if within 60 days after its submission to him, the Attorney General has interposed no objection to it. States or political subdivisions are subject to Section 5 if they maintained any test or device as a prerequisite for voting or registration on November 1, 1964, as certified by the Attorney General, and if the Director of the Census determines that less than 50 percent of the persons of voting age residing within the state or political subdivision were registered on November 1, 1964, or that less than 50 percent of such persons voted in the presidential election of that year.[2]

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[1] The operative dates were extended to November 1, 1968, by Pub. L. 91-285, 84 Stat. 314 (1970), and to November 1, 1972, by Pub. L. 94-73, 89 Stat. 402, 404 (1975).

[2] Section 4(c) of the Act, 42 U.S.C. 1973b(c), defines test or device as a prerequisite for voting or registration requiring

On August 6, 1965, the Attorney General and the Director of the Census made determinations designating the State of Alabama as a state covered by Section 4 of the Voting Rights Act. 30 Fed. Reg. 9897. Between August 6, 1965, and April 15, 1977, the Attorney General received submissions of more than 1,000 changes from the State of Alabama and from cities and counties within it. Almost 700 of these changes were tendered by 91 Alabama cities.[3]

On March 20, 1975, the city of Sheffield, Alabama, wrote the Attorney General to "give notice of the proposal of submitting to the qualified voters of the City, whether the present commission form of government shall be abandoned in favor of the Mayor and Alderman form . . ." The city advised that "present existing voting wards are not changed at the time of voting (but may be equitably adjusted at a later date) and [that in Sheffield] the form of government (mayor-alderman) existed in 1912 and if the present commission type is abandoned, the previous form would automatically be reinstated" (Stip. Ex. 1).[4] On May 13, 1975 the city's electorate approved the proposal (App. C, *infra*, p. 10a).

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a person to demonstrate literacy or understanding, educational achievement or knowledge, or good moral character, or to prove these qualifications by the voucher of other persons.

[3] These figures were derived from a survey of Department of Justice records by the Voting Rights Section of the Department's Civil Rights Division.

[4] "Stip. ——" refers to the stipulation of fact, and exhibits attached thereto, filed by the parties in the district court.

The Attorney General replied to the city on May 23, 1975.[5] He advised that he "does not interpose an objection to the holding of the referendum," but pointed out that his failure to object "does not bar any subsequent judicial action to enjoin the enforcement of the change;" he also noted that "[s]ince voters in the city of Sheffield elected to adopt the mayor-council form of government on May 13, 1975, that change is also subject to the preclearance requirements of Section 5" (Stip. Ex. 2).

The Attorney General's letter also requested that if the city proposed to seek clearance through the Attorney General, rather than by a proceeding in the District Court for the District of Columbia, that it should submit detailed information concerning the change, including a description of "the aldermanic form of government which existed in 1912 and the method by which it was elected, *i.e.* the number of aldermen, the terms and qualifications for the mayor and aldermen, whether the aldermen were elected at large or by wards, whether there were numbered posts, residency, majority vote or staggered term requirements for the aldermanic seats, and whether single-shot voting was prohibited" (Stip. Ex. 2).

Thereafter, the city made a submission to the Attorney General, including a post-referendum brochure on the mayor-council form of government for the city, which indicated that under Code of Ala., Tit.

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[5] The city's letter had been received by the Attorney General on March 26, 1975 (Stip. Ex. 1).

37, § 426 (Cum. Supp. 1973), the city would be divided into four wards of substantial equality of population, that each ward would have two council seats, that councilmen from each ward would be elected by the city at large, and that candidates would run for numbered places (Stip. Ex. 3).

On December 22, 1975, the Attorney General requested additional information, including advice as to whether the city would return to the aldermanic form existing as of 1912, and whether the change was consistent with Alabama law as explained in an opinion of the Attorney General of Alabama (Stip. Ex. 3) dated August 19, 1968. Among other things the Attorney General requested a detailed map showing ward boundaries, population distribution by race for each ward, and the history of black candidacy for city and county offices since 1965 (Stip. Ex. 4).

The city furnished this information as well as the opinion of its counsel that the 1912 law was the same as present law with respect to the number of aldermen, residency, and majority vote requirements, and that the change was consistent with Alabama law. The submission also showed that Sheffield has a total population of 13,115, of which 19 percent (2,526 persons) are black, and that most of these black residents (2,222) were concentrated in ward 2, where they comprise 68.5 percent of the total ward population (Stip. Ex. 5).

The Attorney General considered the city's submission to be complete as of May 5, 1976, the date

this information was received. On July 6, 1976, the Attorney General advised the city that he did not "interpose any objection to the change to a mayor-council form of government, * * * to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect" (Stip. Ex. 6). Accordingly he objected to implementation of the proposed at-large method of electing city councilmen (*ibid.*).

Notwithstanding the Attorney General's objection, the city scheduled an at-large council election for August 10, 1976. On August 9, the Attorney General filed this action to enjoin the election on the ground that the city had not obtained preclearance under Section 5. On December 13, 1976, the three-judge district court convened under Section 5 dismissed the complaint[*] on the ground that Section 5 of the Act provides that only designated States and political subdivisions of States need submit proposed changes in their voting laws for preclearance. Since political subdivisions are defined in Section 14(c)(2) of the Act as counties, parishes or other subdivisions

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[*] The district court's order of December 13, 1976, withdrew a previous opinion and order of the court, entered September 29, 1976, holding that the Attorney General's action was untimely. On reconsideration the court concluded that the 60-day period for interposing an objection under Section 5 expired on July 6, 1976, the next full business day after the 1976 Independence Day holiday (App. C, *infra*, p. 11a).

which conduct registration for voting, it concluded that the city of Sheffield was not a political subdivision because in Alabama registration is conducted by the counties (App. B, *infra*, pp. 14a-15a). The court rejected the government's contention that "if an entire state is determined to be covered the 'or in any political subdivision' language is not applicable, and the definition of 'political subdivision' has no relevance in determining the Section 5 obligations of the covered state" (App. C, *infra*, p. 4a).

The district court also held that by interposing no objection to the city's referendum, the Attorney General had effectively granted clearance to the at-large method of electing the city council, because Code of Ala., Tit. 37, § 426 (Cum. Supp. 1973) provides that in Alabama cities of less than 20,000 population, two aldermen from each ward shall be elected at-large. Therefore, the court reasoned, the Attorney General's failure to object to the referendum ended his authority concerning voting changes to be effected under Section 426 if the proposal for a mayor-council government prevailed.[7]

[7] Circuit Judge Rives declined to concur in this portion of the opinion on the ground that the Attorney General's letter of May 23, 1975, "expressly conditioned his failure to object to the holding of the referendum by stating that the implementation or enforcement of the change in form of government is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act" (App. B, *infra*, p. 19a).

THE QUESTIONS ARE SUBSTANTIAL

1. By holding that cities and other political entities that do not conduct voter registrations are excluded from the preclearance requirements of Section 5 of the Voting Rights Act, even though the States within which they are located are covered by Section 4 of the Act, the district court has severely limited the statute's effectiveness. The district court's construction would enable cities within covered states to dilute the voting rights of minorities by such devices as redistricting, at-large or multi-member elections, and annexations, even though the use of these devices by local governments was a major reason for adoption and continuation of the Act's preclearance requirements. Cf. *Perkins* v. *Matthews*, 400 U.S. 379, 388-389.[8] This immunization of voting changes by local governments from Section 5 is not required by the Act's language, and is inconsistent with the Act's structure, its original legislative history, the Attorney General's consistent interpretation of it since its adoption in 1965, and Congress' endorsement of that interpretation upon extending and amending the Act in 1970 and in 1975.

The district court's conclusion is based upon a literal reading of Section 5 of the Act, which requires "a State or political subdivision" covered under Section 4(b) to obtain preclearance for voting changes

[8] *Perkins* involved changes in the location of polling places and changes in municipal boundaries through annexation by the City of Canton, Mississippi.

before they may be implemented. We submit, however, that when Sections 5 and 4(b) are read in the light of the Act's structure, purpose, and administrative and legislative history, it is manifest that all political units within a State, or within a political subdivision of a State, which have been designated under Section 4(b), are subject to Section 5. The definition of "political subdivision" in Section 14(c)(2) serves only to define for purposes of Section 4(b) the kind of political subdivisions that are subject to the "triggering" determinations by the Attorney General and the Director of the Census. It is not, we submit, an exclusive definition which places cities within designated states or political subdivisions outside the coverage of the Act.

This may be seen from the structure of the Act itself. Section 4(a) provides that no citizen may "be denied the right to vote in any Federal, State or *local* election because of his failure to comply with any test or device *in any* State" which is within the coverage of the Act as defined in Section 4(b). The provisions of Section 4(a) in turn "apply *in* any State *or in* any political subdivision of a state" which the Attorney General finds maintained a test or device on the date of the Presidential election, and in which less than 50 percent of the eligible voters actually registered or voted (emphases added).

The scope of Section 5 in turn depends on Section 4. It applies to voting changes by "a State or political subdivision with respect to which the prohibitions set forth in section 4(a) * * * based upon determinations

made under the first sentence of Section 4(b) are in effect * * *." When the two sections are read together, therefore, it follows that local elections within a state or political subdivision are among the subjects of change which must be precleared. That the requirements or procedures for the local elections are enacted by the local political entity, rather than by the designated State or designated political subdivision, must be as irrelevant to Section 5 as it is to the concomitant prohibition of Section 4(a) against the use of tests or devices in local elections if the Act is to be internally consistent.

As the disjunction "State or political subdivision" indicates, only when the State itself has not been designated under Section 4(b) does it become necessary to consider, for purposes of Section 4, the definition of "political subdivision" in Section 14(c)(2), for if the State has been designated, local entities, including counties, parishes, and other bodies, are within Section 4's coverage. Indeed, the district court stated that if a State is designated, "political subdivisions" within it, as defined in Section 14(c)(2), are automatically covered (App. B, *infra*, p. 6a; App. C, *infra*, p. 13a). Section 14(c)(2), however, was added to the proposed legislation only for a limited purpose: to facilitate the determination by the Director of the Bureau of the Census under Section 4. In the 1965 House hearings, that official testified that without such a limitation he would have great difficulty in determining under Section 4(b) whether 50 per-

cent of eligible voters had registered and voted in the 1964 Presidential election. Hearing on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., pp. 78, 331-332, 335, 363 (1965).

Nothing in the history of the Act supports the holding below that when an entire state, or a separate political subdivision, is designated, Congress intended to exclude from clearance under Section 5 voting changes in cities or other governmental units within such states or political subdivisions simply because these units do not conduct voter registration. The legislative history indicates quite the contrary understanding. For example, in proposing an amendment which would have stricken Section 5, Senator Talmadge objected that it would otherwise require all local government units within a designated state to obtain preclearance under the Act (111 Cong. Rec. 10729 (1965)):

> The language in the pending bill is so phrased that it would relate to any voting qualifications or prerequisite to voting, standard, practice or procedure. No matter what kind of legislation might be involved, whether it be from a city council, a resolution of the county commissioners, or an act of the legislature of the States affected, they would have to come to Washington, D.C., and beg the Attorney General to allow them to implement their own legislation * * *.
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> * * * * *
>
> * * * If the officials of the town of McDonough * * * decided to change the date on which to hold

> a mayor's election [or] * * * [i]f a municipality in Georgia desired to hold an election relating to sewage bonds, it would have to come all the way to Washington, D.C., to obtain the approval of the Attorney General and of the District Court for the District of Columbia. * * *
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> * * * * *
>
> This is so far-fetched that if the city of Atlanta wished to hold a referendum to determine whether it would have a mayor-type city government or a city manager city government, and it enacted a law in its council and petitioned the general assembly to that effect, before it could go into effect, it would have to come to Washington to obtain the approval of the Attorney General and the District Court of the District of Columbia before it could implement it. * * * *[9]

In accordance with the Act's structure and history, the Attorney General has consistently interpreted the statute as requiring cities within covered states to submit proposed changes under Section 5 regardless of whether such cities conduct voter registration. Between August 6, 1965, and May 1, 1977, the Attorney General received more than 3,600 submissions of more than 8,100 proposed changes by political units within designated states or designated political subdivisions other than counties or parishes, including

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[9] Although this is a statement of an opponent of the bill, it is nevertheless relevant, particularly since the proponents did not disagree with the opponent's analysis. *Arizona* v. *California*, 373 U.S. 546, 583 n. 85. Indeed, this Court has previously noted Senator Talmadge's remarks in considering the scope of Section 5. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 568, n. 32.

cities and school, water, and public utility districts. Fifty-six per cent of all Section 5 submissions and 58 per cent of the changes included in all submissions have been from such political units. Among these are almost 700 changes from 91 Alabama cities, noted *supra*, n. 3, p. 4. This contemporaneous administrative construction is significant evidence of the Act's meaning, especially in view of the Attorney General's role in drafting the statute.[10] See *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 210; *Udall* v. *Tallman*, 380 U.S. 1, 16. Indeed, in *Perkins* v. *Matthews*, *supra*, this Court held that annexations by a city within the covered State of Mississippi were subject to the preclearance requirements of the Act.[11]

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[10] See testimony of Attorney General Katzenbach at the Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., p. 9 *et seq.* (1965); and testimony of Attorney General Katzenbach at the Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., p. 14 *et seq.* (1965).

See, also, Exhibit 5 to testimony of J. Stanley Pottinger at the Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., pp. 183-185 (1975), listing Section 5 objections interposed by the Attorney General, all but those relating to changes proposed by cities within covered States.

[11] The district court apparently distinguishes *Perkins* on the ground that in Mississippi cities conduct voter registration and are therefore "political subdivisions" under Section 14(c)(2) (App. B, *infra*, p. 5a n. 6; App. C, *infra*, pp. 12a-13a). But nothing in this Court's opinion indicates that the conduct of registration was a prerequisite to the Court's conclusion that Section 5 applied to Mississippi cities because the State is covered. Moreover, a number of federal district courts have required that Section 5 procedures be satisfied when non-registering municipalities located within covered states enact voting changes. See, *e.g.*, *Darden* v. *City of Hueytown*, N.D. Ala., No. 76-P-1126-S, decided August 30, 1976 (three-judge court) (annexation); *Gaillard* v. *Young*, D. S.C., No. 74-1265, decided March 21, 1975 (reapportionment of Charleston City Council); *Woodard* v. *Lanier*, N.D. Ala., No. CA 74-H-752-S, decided October 22, 1974 (annexations by City of Bessemer); and *Jackson* v. *Land*, W.D. La., No. 15,845, decided June 16, 1972 (annexation by Town of Lake Providence).

Moreover, the Attorney General's administrative construction has been endorsed by Congress. During consideration of the 1970 extension of the Voting Rights Act (Pub. L. 91-285, 84 Stat. 314), the failure of the City of Anniston, Alabama, to obtain preclearance of a change in its electoral system was brought to the attention of Congress, and members of the Senate cited the Anniston situation as a reason for the retention of Section 5.[12] And in enacting the 1975 amendments to the Act (Pub. L. 94-73, 89 Stat. 402, 404) not only did Congress have before it the Attorney General's construction,[13] but both the House

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[12] Joint Views of 10 members of the Senate Judiciary Committee Relating to the Extension of the Voting Rights Act of 1965, 116 Cong. Rec. 5521 (1970).

[13] See testimony of J. Stanley Pottinger at the Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., p. 165 *et seq.* (1975); Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 535 *et seq.* (1975).

and Senate Reports cited,[14] as evils to be remedied, examples of changes in voting laws by municipalities and school districts within the State of Texas which diluted minority voting strength. The testimony from which these examples were drawn specifically noted that "[U]nder the provisions of Section 5 of the Voting Rights Act, all of these changes in electoral arrangements would have to meet preclearance through the Attorney General".[15] In none of these instances was any distinction drawn between political units that conduct voter registration and those that do not.

In view of this history,[16] it is evident that Congress agreed with the Attorney General's interpretation that the Act applies to changes in voting laws by all political units within states or separately designated political subdivisions. See *Georgia* v. *United States*, 411 U.S. 526, 533; *United States* v. *Correll*, 389 U.S. 299, 305-306; *Fribourg Navigation Co.* v.

[14] S. Rep. No. 94-295, 94th Cong., 1st Sess., pp. 27-28 (1975); H.R. Rep. No. 94-196, 94th Cong., 1st Sess., pp. 19-20 (1975).

[15] Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 490 (testimony of Dr. Charles L. Cotrell) (1975).

[16] The legislative history cited by the district court (App. B, *infra*, p. 6a; App. C, *infra*, pp. 13a-14a) is not inconsistent with the foregoing. The term "political subdivision" in the cited passages from the Senate Report must be read in light of Congress purpose to limit political subdivisions for purposes of designation to political units from which the Bureau of the Census could obtain voting and registration data (see pp. 11-12, *supra*).

Commissioner, 383 U.S. 272, 283; *Costanzo* v. *Tillinghast*, 287 U.S. 341, 345.

The decision in the instant case conflicts with the decisions of other three-judge district courts requiring cities within covered states to obtain preclearance under Section 5 before implementing voting changes (see cases cited n. 11, *supra*, p. 14). Moreover, the question of the Act's application to non-registering political entities has now been raised in a series of cases pending in Texas. See *United States* v. *Board of Trustees of the Chapel Hill I.S.D.*, No. TY-77-137-CA (E.D. Tex.); *United States* v. *Westheimer I.S.D.*, Civ. No. 77-H-121 (S.D. Tex.); *United States* v. *Midland I.S.D.*, Civ. No. MO-77-17 (W.D. Tex.); *United States* v. *Hawkins I.S.D.*, Civ. No. TY-77-81 (E.D. Tex.); *Gomez* v. *Galloway* (City of Beeville), Civ. No. 76-146 (S.D. Tex.); *Hereford I.S.D.* v. *Bell*, Civ. No. 2-77-14 (N.D. Tex.)[17] It is presently un-

[17] In *Chapel Hill*, *Midland* and *Hawkins*, the school districts notified the Attorney General that in light of the *Sheffield* decision, they would not heed his Section 5 objections. The Attorney General brought suit to enjoin implementation of the voting changes absent Section 5 preclearance. The single-judge court dismissed, *Gomez* v. *Galloway*, *supra*, and, relying on that order, similar orders were entered in *Hereford I.S.D.*, *supra*, and *Coalition to Preserve Houston* v. *Westheimer I.S.D.*, Civ. No. 77-H-92 (S.D Tex.) (a private Section 5 suit raising the same issue as *United States* v. *Westheimer*, *supra*). However, the court of appeals reversed the dismissal in *Gomez* and ordered the convening of a three-judge court, C.A. 5, No. 77-1344, decided March 11, 1977. The district court in *Hereford I.S.D.*, *supra*, then ordered its dismissal order held in abeyance pending the convening of a three-judge court. *Coalition to Preserve Houston*, *supra*, is pending on appeal, No. 77-1320 (C.A. 5).

clear whether minority populations residing in non-registering political entities within designated states and political subdivisions are protected by Section 5 from local voting changes which may dilute or destroy the political rights Congress sought to guarantee. Moreover, local governments are now uncertain of their statutory obligations under the Act. The conflict, therefore, requires prompt resolution.

2. If, as we contend, Section 5 applies, the Attorney General's decision to interpose no objection to Sheffield's referendum did not constitute clearance under Section 5 of the method of electing city councilmen. In its submission to the Attorney General, Sheffield sought preclearance only for the referendum; it did not seek approval for the change in form of government which was effectuated by the referendum. Statement, *supra*, p. 4. Moreover, at the time the Attorney General decided not to object to the referendum (which, in the meantime, had already been held), he warned that any change would require preclearance (p. 5, *supra*). The city had not yet indicated the detailed changes that would take place under the new form of government. For example, there was some indication that wards as they had existed in 1912 would be restored although ward boundaries were yet to be drawn when the referendum took place (p. 6, *supra*). Under the pertinent regulations, the Attorney General considers a voting change prior to a referendum relating to that change only if "all other action necessary for adoption has been taken." 28 C.F.R. 51.7. In Sheffield, such action had not

yet been taken prior to the referendum. Indeed, after the referendum there followed an extensive correspondence between the City and the Attorney General concerning the actual nature of the change, and its effect on the city's substantial black population (pp. 5-6, *supra*). In the circumstances, therefore, the new form of city government was not before the Attorney General for clearance until the final plan for electing the council from defined wards was adopted and submitted by the city government.

CONCLUSION

Probable jurisdiction should be noted and the judgment of the district court should be reversed.

Respectfully submitted.

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MAY 1977.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

ORDER

Before Rives, Circuit Judge; and Grooms and McFadden, District Judges.

In conformity with the Memorandum Opinion entered contemporaneously herewith, it is

ORDERED, ADJUDGED and DECREED that plaintiff's motion for reconsideration of this Court's ruling of December 13, 1976, is hereby denied.

Done this 31st day of March, 1977.

/s/ Richard T. Rives
United States Circuit Judge

/s/ H. H. Grooms
United States District Judge

/s/ Frank H. McFadden
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

MEMORANDUM OPINION

Before Rives, Circuit Judge; and Grooms and McFadden, District Judges.

McFadden, District Judge.

This cause comes before the Court on the motion of the United States for reconsideration of this Court's December 13, 1976 ruling. The United States filed suit on August 9, 1976 seeking to enjoin the defendants from changing from a Commission to a Mayor-Council form of government. On September 29, 1976 this Court denied relief and dismissed the complaint upon the ground that the Attorney General, pursuant to 42 U.S.C. § 1973c, had failed to interpose a timely objection to the defendants' proposed new form of government. The United States moved for reconsider-

ation, and on December 13 the motion was granted in that the Attorney General's objection was decreed as having been timely filed, but we again denied relief and dismissed the action based on our finding that the City of Sheffield was not a "political subdivision" as defined by the Voting Rights Act and was therefore not subject to the Section 5 pre-clearance requirements; and on the finding that when the Attorney General approved the referendum to determine whether the City would change to the Mayor-Council government he in effect approved the new form of government.

The Government's contention continues to be that under the circumstances presented [1] Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, is applicable and that defendants have not received federal pre-clearance of the new form of government by either of the two statutorily required methods.

The question presented is whether, in the circumstances of this case, the definition of political subdivision is applicable. We think it is.

> The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.[2]

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[1] See this Court's Memorandum Opinion, December 13, 1976, for an accounting of the relevant facts.

[2] 42 U.S.C. § 1973*l*(c) (2).

The Government contends that Section 5 applies to all changes which affect voting in a covered State, as compared to one not covered, regardless of whether those voting changes are enacted or implemented in a political entity which is outside the definition. Essentially the contention is that "[i]f an entire state is determined to be covered the 'or in any political subdivision' language is not applicable, and the definition of 'political subdivision' has no relevance in determining the Section 5 obligations of the covered state." [3]

In support of its contention the Government refers us to the language of the Act, its legislative history, the Attorney General's consistent interpretation of the Act, enforcement of the Act by the courts, the fact that Congress has twice extended and amended the Act with knowledge of its interpretation and enforcement, and the actual number of submissions made to the Attorney General under § 1973c.

The pertinent language of the Act and its formal legislative history are in our judgment sufficient to ascertain the clear meaning of the statute.

Section 5 states in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title *based upon determinations made under the first sentence of section 1973b(b)* of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964. . .
>
> [Emphasis supplied].

[3] Brief of plaintiff at 6.

The first sentence of § 1973b(b) triggers the operation of Section 5. It reads in relevant part: [4]

> The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines . . . *and with respect to which* (2) the Director of Census determines. . .
>
> [Emphasis supplied].

The State of Alabama was designated by both the Attorney General and the Director of Census under §§ 1973b(b)(1) and (2); [5] therefore, the State of Alabama is clearly subject to Section 5 of the Act. It is also clear that where the State has been designated by both the Attorney General and the Director of the Census, the political subdivisions are also covered by the Act. [6]

[4] The Voting Rights Act is replete with ". . . this section shall apply in any State or any political subdivision of a State which (1) the Attorney General determines . . . (2) the Director of Census determines . . ."

[5] See 30 Fed. Reg. 9897 (August 1, 1965).

[6] In our December 13 opinion, at p. 4, we said that *Perkins* v. *Mathews*, 400 U.S. 379 (1971), "involved the City of Canton, Mississippi, and the [Supreme] Court in a footnote without discussion stated that Mississippi and its subdivisions were covered. (400 U.S. 379, n. 2)." Mr. Justice Brennan went on to say however that:

[Footnote continued on page 6a]

The formal legislative purpose of § 1973b(b) reads in pertinent part:

> Where an entire State falls within this subsection [§ 1973b(b)(1) and (2)] so does each and every *political subdivision* within that State.'
>
> [Emphasis supplied.]

Accordingly, we are still convinced that the term "political subdivision" is relevant and defines the extent of applicability of Section 5 obligations in designated states. We find nothing in the Act, the legislative history,[8] or the cases, which take the Section

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[8] [Continued]

"In his unreported oral opinion granting temporary relief, he [district judge] *correctly stated*:

> 'The only questions to be decided by . . . the three judge court to be designated, [are] whether or not the *State of Mississippi or any of its political subdivisions* have acted in such a way as to cause or constitute a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 . . .' "
>
> [Emphasis supplied.]

[7] 1965 *U.S. Congressional and Administrative News*, pp. 2456, 2561; see also, Post Trial of pl. at 2.

[8] The legislative history makes it doubly clear that 42 U.S.C. § 1973*l*(c)(2) was intended as a restriction on the coverage of the Act. As stated in our December 13, 1976 opinion (p. 5), the pertinent history reads:

> "Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish *except that in those instances where registration is not conducted under the supervision of a county or parish*, the term includes any other subdivision of a State which conducts registration for voting. *This definition makes clear that the term*

5 application beyond that point. It is as clear now as before that the City of Sheffield is not a political subdivision. The City neither registers voters nor supervises their registration. The Colbert County Board of Registrars conducts all voter registration for the City thereby excepting Sheffield from the Act's direct enforcement.[9]

The Government suggests that the term "political subdivision" has meaning only in a State which has not been covered under § 1973(b)(1) and (2) of the Act, but in which certain political subdivisions thereof have been designated making them subject to Section 5. This argument is in our judgment untenable, and would lead to anomalous results. It would require the application of Section 5 to all political units within a designated State, such as Alabama, notwithstanding their size, function or the fact that none of them register voters. It would permit a court to exempt such political units in an undesignated State or in a State designated by only the Attorney General or the Director, such as New York,[10] even though

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> *'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or* parish which supervises registration for voting."
>
> [Emphasis supplied.]

1965 *U.S. Code Congressional and Administrative News*, p. 2569; see also p. 2464.

[9] Title 17, § 21, Code of Alabama (Recomp. 1958); Title 37, § 34(35), Code of Alabama (Cum. Supp. 1973).

[10] See *United Jewish Organization of Williamsburgh* v. *Carey*, 45 U.S.L.W. 4221 (U.S. March 1, 1977).

the political unit involved was within a political subdivision designated by both the Attorney General and Director, or for that matter even if all the political subdivisions of that State had been individually designated by the Attorney General and the Director of Census. This Court simply does not read the language or the underlying legislative intent of the Voting Rights Act as calling for such disparate treatment of political entities.[11]

Accordingly, for the reasons herein set forth, together with those stated in our Memorandum Opinion of December 13, 1976, the Court is of the opinion that plaintiff's motion for reconsideration is due to be denied.

/s/ Richard T. Rives
United States Circuit Judge

/s/ H. H. Grooms
United States District Judge

/s/ Frank H. McFadden
United States District Judge

March 28, 1977

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[11] Even though our holding that the Act is inapplicable makes any further finding unnecessary, the majority of the Court remains of the opinion, assuming the applicability of the Act, that the Attorney General's approval of the referendum constituted approval of the form of government that followed. (See our Memorandum Opinion dated December 13, 1976.)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

MEMORANDUM OPINION

Before Rives, Circuit Judge, and Grooms and McFadden, District Judges.

McFadden, District Judge.

The Attorney General of the United States initiated this action pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973(c), seeking to enjoin the implementation of a proposed change in the form of the government of the City of Sheffield, Alabama, to the extent that it provides for an at-large method of electing city councilmen until federal pre-clearance by either of the two statutorily required methods has been obtained.

On March 20, 1975, the City of Sheffield, pursuant to Section 5 of the Voting Rights Act, submitted to

the Attorney General of the United States for pre-clearance a proposal for conducting a referendum to determine "whether the present commission form of government shall be abandoned in favor of the Mayor and Aldermen form of government." The Attorney General did not object to the holding of the referendum, but cautioned that the change to the new form of government remained subject to the pre-clearance requirements of Section 5. The voters of the City approved the referendum on May 13, 1975, thereby authorizing a change from a Commission form of government to a Mayor-Council City Government. On October 23, 1975, the Attorney General received the City's submission for pre-clearance of the change to the Mayor-Council Government, which the City contends was unnecessary, but done out of an abundance of caution. On December 22, 1975, the Attorney General requested additional information, which he received on May 5, 1976. On July 6, 1976, the Attorney General interposed an objection to the proposed at-large method of electing City Councilmen under the new form of government and on August 9, 1976, initiated an action seeking to enjoin the election of City Councilmen under the new plan.

This Court, on September 29, 1976, denied plaintiff's request for an injunction and dismissed its complaint on the basis that the Attorney General's objection of July 6 was untimely; thereafter this Court was asked by plaintiff to reconsider the Court's ruling of September 29. The September 29 ruling provided, inter alia, the following:

> Plaintiff merely offers the Executive Order to demonstrate that Monday, July 5, as a 'federal holiday,' citing the Executive Order without more. No evidence of the number of percentage of federal employees excused under the Executive Order was presented to the Court. The Court is of the opinion that plaintiff has failed in its burden to establish an exception to the rule [that a limitations period should be allowed to run unmolested unless an exception is demonstrated] and accordingly the objection was untimely.

This Court remains of the opinion that plaintiff failed at trial and in its post-trial brief to demonstrate that July 5, 1976, was a federal holiday for employees of the Justice Department; however, after considering the Government's Rule 59, Fed. R. Civ. P., motion and in taking cognizance of the affidavits filed therewith, the Court is now satisfied that July 5 was a federal holiday for employees of the Justice Department, making July 6 the next full business day for the Attorney General which under his regulations would make the objection timely. (We assume the validity of the regulation for the purpose of this case, but express no opinion thereon.) Accordingly, the Court is of the opinion that plaintiff's Rule 59 motion is due to be granted to the extent that July 6, 1976 was the next full business day for the Attorney General and his employees; therefore making the objection timely. 28 C.F.R. § 51.3(c).

Since the Court, in its opinion of September 29, did not address several issues, it is now necessary to do so.

1. Is the City of Sheffield, Alabama, a "political subdivision" as defined by the Act and as reflected by the Act's legislative history?

2. Did the Attorney General's approval of the referendum have the force and effect of also approving the change from a Commission to a Mayor-Council form of government?

This Court previously held that the City of Sheffield was covered by the Act, relying on *Perkins* v. *Mathews*, 400 U.S. 379 (1971), but upon further analysis the Court is of the opinion that this was error. *Perkins* involved the City of Canton, Mississippi, and the Court in a footnote without discussion stated that Mississippi and its subdivisions were covered. (400 U.S. 379, n. 2)

All reported cases which the Court has found applying the Voting Rights Act to municipalities have involved either state legislative enactments clearly subject to the Act, such as did *Robinson* v. *Pottinger*, 512 F.2d 775 (5th Cir. 1975), and *United States* v. *Cohan*, 358 F. Supp. 1217 (S.D. Ga. 1972); or they involved cities which do in fact conduct or supervise registration of voters. Of the latter type are *Perkins* v. *Mathews*, *supra* (see Miss. Code Ann. § 21-11-3); *Allen* v. *Board of Elections*, 393 U.S. 544 (1969) (see Code of Va. Tit. 24.1, §§ 43-46, Cum. Supp.

1976);[1] *United States* v. *Garner*, 349 F. Supp. 1054 (N.D. Ga. 1972) (see Ga. Code Ann. § 34A-502); and *Beer* v. *United States*, 425 U.S. 130 (1976) (see La. Rev. Stat. §§ 18:270.101, 18:270.105, and 18:207.301, Cum. Supp. 1976).[2]

Designated states and subdivisions under the Act are subject to the pre-clearance procedures of section 5, when they "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964. . ." 42 U.S.C.S. 1973(c), as amended. The Attorney General's designation of a state implies his designation of its political subdivisions. 1965 *U.S. Code Congressional and Administrative News*, pp. 2456, 2561. Political subdivision is clearly defined in the Act, 42 U.S.C. § 1973*l*(c)(2): "The term 'political subdivision' shall mean any county or parish,

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[1] The statement in *Allen* that § 5 applies to city as well as county governments is consistent with § 1973*l*(c)(2) in that, "In Virginia, cities and counties are mutually exclusive." *Holt* v. *Richmond*, 459 F.2d 1093 (4th Cir. 1972).

[2] The government of the City of New Orleans and Parish of Orleans is *sui generis* in the State of Louisiana. The boundaries of the city and the parish are coextensive, and there is no general administrative body for the government of the parish, the City Council of New Orleans performing the duties which are performed in other parishes by the parochial governing bodies. Registration of voters is conducted by the Registrar of the Parish of Orleans, who is, however, appointed by the City Council, which provides that official with office space and pays that portion of his salary which is in other parishes the responsibility of the parish authorities.

except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

The legislative history of this section makes it clear that this section was intended as a restriction on the coverage of the Act.

> Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State which conducts registration for voting. This definition makes clear that the term 'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting.

1965 *U.S. Code Congressional and Administrative News*, p. 2569; see also p. 2464.

Under Alabama law municipalities neither conduct nor supervise registration of voters. All registration powers are vested in County Boards of Registrars which furnish voter lists to municipalities. Tit. 17, § 21, Code of Alabama (Recomp. 1958); see also Tit. 37, § 34(35) Code of Alabama (Cum. Supp. 1973). Accordingly, this Court is of the opinion that the City of Sheffield is not covered by the Voting Rights Act of 1965. It is a political unit, but within a county which supervises registration for voting; therefore, falling outside the definition of "political subdivision"

as defined by the Act and the legislative history thereof.

This Court is further of the opinion that by approving the referendum the Attorney General in fact approved the change to the Mayor-Council form of government notwithstanding his caution to the City that the change was also subject to pre-clearance.

After the referendum was adopted, the Attorney General objected to the new form of government on the basis of the at-large method of electing the City Councilmen and indicated a preference for separate election districts. He did not object to the at-large method of electing the Mayor or the Council President. Prior to approval of the referendum the Attorney General was made aware that under the law of Alabama, if the referendum was adopted, the City would be obliged to follow the directive of Tit. 37, § 426, Code of Alabama (Recomp. 1958), which provides, inter alia, for the at-large election of Mayor, Council President and City Councilmen. The Attorney General's approval of the referendum may be characterized in one of the two ways. First, his approval of the referendum carried with it an implicit approval of the new government. Secondly, his approval of the referendum terminated his authority under the Act to further oversee the results of the referendum, since the new government thereby adopted is mandated by Alabama law.

Accordingly, it is the opinion of this Court that the Attorney General's approval of the referendum, paired with his actual or constructive knowledge of

Tit. 37, § 426, precludes further objection to the City's new form of Government.

Other courts have called the Attorney General's authority into question in voting right cases. The case of *Jenness* v. *Little*, 306 F. Supp., 925, 927 (N.D. Ga. 1969) (three-judge district court, involved an attack on the validity of a municipal ordinance requiring the payment of qualifying fees by candidates for municipal offices. The Court in *Jenness* held the ordinance unconstitutional but rejected a contention that it required the Attorney General's approval:

> The contention that the new ordinance establishing a new schedule of fees had to likewise be approved by the Attorney General is rejected. This ordinance was adopted pursuant to Georgia Municipal Election Code of 1968, supra, which expressly permitted the exaction of qualifying fees (Ga. Ann. Code Supp. § 34A-904) and that Act has been approved by the Attorney General in compliance with the Voting Rights Act, supra.

This Court is likewise of the opinion that the Attorney General may not, by authority of the Act, continue to oversee the results of a "change" he has approved.

In the instant case, the at-large method of electing City Councilmen followed as a matter of law under Tit. 37, § 426, when the voters of the City adopted the referendum. The Attorney General approved the change in form of government and now wishes to

object to the specific effects which are required under Alabama law. The Attorney General's approval of the change in form of government in which the features now found objectionable were incorporated as a matter of law exhausted his authority under the Voting Rights Act to further oversee the consequences of that approval. By approving the referendum the Attorney General at least implicitly approved the change that followed. The Act is not designed to allow an uninterrupted surveillance by the Attorney General of "changes" he has approved. Challenge of a "change," approved by the Attorney General, is given to private action by those with standing. *NAACP* v. *New York*, 413 U.S. 345, 352 (1973); *Beer* v. *United States*, 425 U.S. 130, 96 S. Ct. 1357, 1364 (1976).

Accordingly, the Government's request for an amendment to the Order of September 29, 1976 will be granted to the extent that the Court now considers the July 6 objection as having been timely interposed; but, for the reasons stated herein, the Govern-

ment's request for injunctive relief is still due to be denied and the complaint dismissed.

/s/ Richard T. Rives
United States Circuit Judge
Concurring Specially,
Opinion attached.

/s/ Frank H. McFadden
United States District Judge

/s/ H. H. Grooms
United States District Judge

Dated: December 13, 1976

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA: F. E. DRAPER, Member and President; and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

RIVES, Circuit Judge, concurring specially:

I have joined in the separate "Order" because I concur in that part of the Opinion holding that the City of Sheffield is not a "political subdivision" as defined by the Act and its legislative history. I do not concur in that part of the Opinion holding that the Attorney General's *failure* to object to the referendum had the force and effect of *approving* any future changes found desirable for the implementation of the referendum. It seems to me that the Attorney General's letter of May 23, 1975 expressly conditioned his failure to object to the holding of the referendum by stating that the implementation or enforcement of the change in form of government is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President; and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

ORDER

This cause came before the Court on the Government's Rule 59 Fed. R. Civ. P. motion for reconsideration and amendment to this Court's Order of Septemper 29, 1976. The Court has considered the motion, briefs of both parties, pleadings, affidavits, and the applicable statutory and case law and in accordance with the Memorandum Opinion filed contemporaneously herewith is of the opinion that the Government's motion is due to be granted to the extent that the Attorney General's July 6 objection was timely interposed, but that the injunctive relief sought is due to be denied and the complaint dismissed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Government's Rule 59 motion be and the same hereby is granted and the previous opinion and order of the Court is withdrawn.

Further, it is ORDERED that the Government's application for an injunction be and the same is denied and the complaint is dismissed.

Costs are taxed to the Government.

Done this 13th day of December, 1976.

/s/ Richard T. Rives
United States Circuit Judge

/s/ Frank H. McFadden
United States District Judge

/s/ H. H. Grooms
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFFS

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL., DEFENDANTS

NOTICE OF APPEAL

Please take notice that the United States of America, plaintiff in this action, hereby appeals to the United States Supreme Court from the order of the three-judge district court entered on March 31, 1977 denying plaintiff's motion for reconsideration of the district court's ruling of December 13, 1976. The appeal is taken pursuant to 28 U.S.C. section 1253.

/s/ WAYMAN G. SHERRER
United States Attorney

by CARYL P. PRIVETT
Assistant United States Attorney

May 11, 1977

APPENDIX F

Section 4 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973b, provides:

> (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of

such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284

of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection 1973b(f)(2) of this section.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to

which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c, provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting

qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Atorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Section 14(c)(2) of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973*l*(c)(2), provides:

> (2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 234864 6

Supreme Court, U. S.
FILED
AUG 11 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA,

Appellant

—*v.*—

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT DOCKETED MAY 25, 1977
PROBABLE JURISDICTION NOTED JUNE 27, 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA,

Appellant

—v.—

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

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RELEVANT DOCKET ENTRIES
CA 76 M1086NW

DATE	PROCEEDINGS
1976	
Aug. 9	Complaint—filed
Sept. 3	Stipulations of fact—filed
Sept. 3	Hearing before the Hon. Richard T. Rives; Hon. H. H. Grooms and Hon. Frank H. McFadden—opening statements of counsel—stipulations of fact filed—plaintiff's testimony—affidavit of Gerald W. Jones filed—defendant's objection of affidavit entered—objection sustained—plaintiff rests—defendant's testimony—defendant rests—oral argument of counsel—ruling taken under advisement
Dec. 27	Motion of plaintiff for reconsideration and amendment of Order and Opinion entered 12/13/76—filed—cs—rfd

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Aug. 9, 1976]

UNITED STATES OF AMERICA, PLAINTIFF

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to Section 5 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c and 1973j(d), and pursuant to 28 U.S.C. 2201.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

3. Defendant Board of Commissioners of Sheffield, Alabama is the governing body established under the laws of the State of Alabama responsible for exercising the powers and duties inherent in governing the City of Sheffield.

4. Defendant F. E. Draper is the President of the Board of Commissioners of the City of Sheffield and the duly elected mayor of the City. As such, he is vested by the laws of the State of Alabama with the power and the duty to conduct municipal elections. Defendant F. E. Draper is a resident of the Northern District of Alabama.

5. Defendants B. F. Walden and Donald F. Ruggles are members of the Board of Commissioners of the City of Sheffield. As such, they are vested by the laws of the State of Alabama with the responsibility for canvassing

and certifying election results, ordering run-off elections and other powers and duties concerning the conduct of municipal elections. Defendants B. F. Walden and Donald F. Ruggles are residents of the Northern District of Alabama.

6. The provisions of Section 5 of the Voting Rights Act of 1965, as amended, 1973c, apply to the City of Sheffield, Alabama.

7. Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires that jurisdictions subject to its provisions which "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," obtain a declaratory judgment from the United States District Court for the District of Columbia that the change affecting voting "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . ." except that such a change affecting voting may be implemented without such a judgment if it is submitted to the Attorney General and he has not interposed an objection in 60 days.

8. On May 13, 1975, voters in the City of Sheffield voted pursuant to a special referendum election to abandon the existing commission form of government and to adopt the aldermanic (mayor-council) form of government. Under the aldermanic form of government the Mayor and Council president are to be elected at-large and the eight council members are to be elected at-large with a residency requirement.

9. The change in the form of government for the City of Sheffield and the system for electing that government constitute changes affecting voting within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

10. The proposed change to the mayor-council form of government and the proposed procedures for electing that government were submitted to the Attorney General by the City of Sheffield, Alabama pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The submission by the City was completed on May 5, 1976.

11. In a letter dated July 6, 1976, J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division of the Department of Justice advised the Sheffield City Attorney that while no objection to the change in the form of government or the at-large method of electing the Mayor and the Council president would be interposed, he was unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect and therefore, on behalf of the Attorney General, interposed an objection to the implementation of the proposed at-large method of electing city councilmen. A copy of the July 6, 1976 letter is attached as Exhibit A.

12. As of August 3, 1976, the Attorney General has not received a request from the City of Sheffield to reconsider his objection on the basis of information not previously available that shows that the proposed method of election does not have the effect of denying or abridging the right to vote on account of race or color. 28 C.F.R. Sections 51.21 (b) ; 51.24 and 51.25.

13. No action has been instituted in the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, for a declaratory judgment that the proposed method of electing the councilmen neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

14. The failure to receive the preclearance required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, as described in the preceeding paragraphs, renders the proposed method of electing the councilmen legally unenforceable.

15. Notwithstanding the objection of the Attorney General to the proposed method of electing the councilmen, the defendants are planning to and will implement the legally unenforceable at-large method of electing city council members in an election scheduled for August 10, 1976.

16. Unless the defendants are restrained and enjoined by this Court, membership on the Sheffield City Council will be decided in a manner which is in violation of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

WHEREFORE, plaintiff prays that this cause be advanced on the docket for a speedy and expeditious hearing and that a court of three judges hear this action pursuant to 28 U.S.C. § 2284 and Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and thereafter issue a judgment:

(a) Declaring that the implementation by the City of Sheffield, Alabama of the proposed method of electing the city councilmen to which the Attorney General interposed an objection violates Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c;

(b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with any of them from administering, implementing or conducting an election on August 10, 1976 for membership on the Sheffield City Council pursuant to the proposed method of election to which the Attorney General has interposed an objection under Section 5 and administering, implementing or conducting any subsequent elections in Sheffield, Alabama pursuant to the legally unenforceable plan;

(c) Prohibiting the implementation of any voting practice or procedure different from that in effect in Sheffield, Alabama, on November 1, 1964, unless and until such practice or procedure is submitted to the Attorney General and 60 days pass without interposition of an objection, or a favorable declaratory judgment is obtained from the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965;

(d) Ordering defendants to develop a plan for nominating and electing Sheffield City Councilmen, and, after the plan is found to be acceptable under the provisions of Section 5 of the Voting Rights Act of 1965, to implement the new plan

on a schedule that will enable the councilmanic elections to be conducted pursuant to this new plan.

Plaintiff further prays that this Court grant such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

/s/ Edward H. Levi
EDWARD H. LEVI
Attorney General

/s/ J. Stanley Pottinger
J. STANLEY POTTINGER
Assistant Attorney General

/s/ _____
WAYMAN G. SHERRER
United States Attorney

/s/ Sheila K. Delaney
GERALD W. JONES
SHEILA K. DELANEY
Attorneys
Department of Justice
Washington, D. C. 20530

EXHIBIT A

Jul. 6, 1976

Mr. Vincent McAlister
Almen, McAlister & Ashe
Attorneys at Law
Post Office Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in refernece to the change in form of government for the City of Sheffield, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 5, 1976.

The Attorney General does not interpose any objection to the change to a mayor-council form of government. We feel a responsibility to point out, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See *White* v. *Regester*, 412 U.S. 755 (1973); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the proposed at-large method of electing city councilmen.

Please be advised that you may request the Attorney General to reconsider his objection on the basis of information not previously available that shows that the new method of election does not have the effect of denying

or abridging the right to vote on account of race or color. See 28 C.F.R. Sections 51.21(b), 51.24 and 51.25. In addition, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc: Public File
V8341

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Sept. 3, 1976]

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.
DEFENDANTS

ANSWER

Come the defendants and for answer to the complaint heretofore filed plead and say as follows, separately and severally:

1. The defendants admit the allegations of paragraphs 1, 2, 3, 4, 5, 7, 8, 11 and 13 and deny all other allegations of the complaint.

2. Section 5 of the Voting Rights Act of 1965 as amended 42 U.S.C. § 1973(c) is not applicable to the procedures followed by the City of Sheffield.

3. The City of Sheffield, in the procedures followed by it, was merely implementing a general statute of the State of Alabama which had existed since 1909.

4. The action of the Attorney General in filing this suit was arbitrary, capricious, discriminatory and showed bad faith action.

5. The Attorney General in filing this suit seeks equitable relief and as such must come into the court with clean hands. This equitable maxim has been violated by the Attorney General.

6. The Attorney General failed to interpose an objection to the procedure adopted by the City of Sheffield within 60 days after such submission had been completed.

7. As applied by the Attorney General in this case,

the provisions of the Voting Rights Acts of 1965 as amended are unconstitutional and deny to the defendants and the citizens of Sheffield the equal protection of the laws and the right to vote.

ALMON, McALISTER & ASHE

By /s/ Vincent McAlister
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086-NW

[Filed Sept. 3, 1976]

UNITED STATES OF AMERICA, PLAINTIFF,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS.

STIPULATIONS OF FACT

Plaintiff, the United States of America, and defendants, the Board of Commissioners of Sheffield, Alabama et al., by and through their attorneys, stipulate that the facts listed in the numbered paragraphs below are true and accurate. The parties further stipulate that the exhibits attached to the stipulations are accurate copies of original documents. These stipulations are limited to the truth of the facts stipulated. The parties reserve the right to object to any of the stipulated facts on grounds of irrelevancy or immateriality. The parties reserve the right to offer additional evidence not inconsistent with the stipulations herewith.

1. The Board of Commissioners of Sheffield, Alabama is the governing body established under the laws of the State of Alabama and is responsible for exercising the powers and duties inherent in governing the City of Sheffield.

2. The present Board of Commissioners of Sheffield, Alabama is composed of 3 members, who are elected at-large, to designated positions on a majority vote, staggered term basis. The existing commissioner form of government in Sheffield, Alabama has been in force and effect since before November 1, 1964.

3. Defendant F. E. Draper is the President of the Board of Commissioners of the City of Sheffield and the duly elected mayor of the City. As such, he is vested by the laws of the State of Alabama with the power and the duty to conduct municipal elections. F. E. Draper is a resident of the Northern District of Alabama.

4. Defendants B. F. Walden and Donald F. Ruggles are members of the Board of Commissioners of the City of Sheffield. As such, they are vested by the laws of the State of Alabama with the responsibility for canvassing and certifying election results, ordering runoff elections and other powers and duties concerning the conduct of municipal elections. Defendants B. F. Walden and Donald F. Ruggles are residents of the Northern District of Alabama.

5. A copy of the letter dated March 20, 1975 from Defendant F. E. Draper to the United States Attorney General is attached hereto as Exhibit 1.

6. On May 13, 1975, voters in the City of Sheffield voted in a special referendum election pursuant to the provisions of the Code of Alabama, Tit. 37, Ch. 4, Art. 3, as amended, to abandon the existing commission form of government in favor of a mayor-council form of government which would become effective in October, 1976.

7. A copy of the letter dated May 23, 1975, from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division to Defendant Draper is attached hereto as Exhibit 2.

8. A copy of the letter dated October 21, 1975 from Vincent McAlister, Sheffield City Attorney, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division is attached hereto as Exhibit 3.

9. Under the proposed mayor-council form of government, the mayor and the president of the city council are to be elected on at-large, majority vote basis while the 8 councilmen are to be elected on an at-large, numbered post basis with majority vote and residency requirements. See Code of Alabama, Tit. 37, §§ 34(22), 34(54) and 426 (1973 Cum. Supp.).

10. A copy of the letter dated December 22, 1975, from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division to Vincent McAlister, Sheffield City Attorney is attached hereto as Exhibit 4.

11. A copy of the letter dated May 3, 1976, from Vincent McAlister, Sheffield City Attorney, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division is attached hereto as Exhibit 5.

12. A copy of the letter dated July 6, 1976 from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, to Vincent McAlister, Sheffield City Attorney is attached hereto as Exhibit 6.

Respectfully submitted,

Dated this —— day of September, 1976

/s/

Attorney for Plaintiff
Department of Justice
Washington, D.C. 20530

/s/

Attorney for Defendants
Almon, McAlister & Ashe
Nathan Building
Sheffield, Alabama 35660

EXHIBIT 1

CITY OF SHEFFIELD
Sheffield, Alabama

March 20, 1975

The Honorable Louis Levi
Attorney General of the United States
Washington, D.C. 20530

Dear Mr. Levi:

The undersigned, as President of the Board of Commissioners of the City of Sheffield, Alabama, does hereby give notice of the proposal of submitting to the qualified voters of the City, whether the present commission form of government shall be abandoned in favor of the Mayor and Alderman form of government.

While it is doubtful that this proposition as to change of forms of municipal government is covered by the 1965 voting Rights Act extended in 1970 notice is nevertheless given you in the event the assumption is in error.

Briefly, the change proposed is covered by the provisions of Article 3 of Title 37 of the Code of Alabama, 1940, as amended, which amendments include Act 664, Acts of Alabama 1961, and Act 166, Acts of Alabama, (Reg. Session) 1961.

These provisions are largely concerned with the requirements and mechanics of calling and holding an election for submission to voters.

Present existing voting wards are not changed at the time of voting (but may be equitably adjusted at a later date) and in the case of the City of Sheffield, Alabama, the form of government (mayor-alderman) existed in 1912 and if the present commission type is abandoned, the previous form would automatically be reinstated.

No requirement or condition to vote, other than now exist, will be applicable as to voters to the proposition for change, now set for May 13, 1975.

In the event more information is required, please advise.

Very truly yours,

CITY OF SHEFFIELD, ALABAMA

/s/ F. E. Draper
F. E. DRAPER, Mayor
President, Board of Commissioners

FED:jgj

cc: Attorney General William Baxley
State of Alabama
Montgomery, Alabama

EXHIBIT 2

May 23, 1975

Mr. F. E. Draper
President, Board of Commissioners
City of Sheffield
Post Office Box Q
Sheffield, Alabama 35660

Dear Mr. Draper:

This is in reference to the submission of a referendum to change the existing commission form of government which was submitted to the Attorney General by the City of Sheffield, Alabama, pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your letter of March 20, 1975 was received on March 25, 1975. This letter will also confirm the telephone conversation on April 18, 1975 between you and Departmental Attorney Sheila K. Delaney.

The Attorney General does not interpose an objection to the holding of the referendum. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the change.

Since voters in the City of Sheffield elected to adopt the mayor-council form of government on May 13, 1975, that change is also subject to the preclearance requirements of Section 5. In the event that you elect to make a submission to the Attorney General rather than the United States District Court for the District of Columbia would you please assist us by providing this Department with the following information:

1. A copy of the proclamation or resolution adopted by the City Commission which includes the proposition which was submitted to voters in the City of Sheffield on May 13, 1975.
2. A copy of the State Attorney General's opinion which was rendered concerning the proposed change in the form of government.

3. A statement of the citations for all legislative enactments which describe fully the aldermanic form of government which existed in 1912 and the method by which it was elected, *i.e.*, the number of aldermen, the terms and qualifications for the mayor and aldermen, whether the aldermen were elected at-large or by wards, whether there were numbered post, residency, majority vote or staggered term requirements for the aldermanic seats, and whether single shot voting was prohibited.
4. A full description of the method of electing the aldermanic form of government and a statement to what extent, if any, that method of election differs from the method of election in force in 1912. Please provide a statement of the citations for all legislative enactments which will govern the method of electing the first and all succeeding aldermanic administrations.
5. While copies of local newspaper articles and editorials which discussed the proposition to abandon the city's existing form of government are not essential for purposes of our review, we would appreciate it if you would enclose some.

It is our understanding that since the voters elected to abandon the commission form of government, the commission will remain in office until the first aldermanic form of government is elected at the next general municipal election in August, 1976. It is our further understanding that there will be four wards under the mayor-council form of government, the boundaries of which will be drawn at least six months before the election of the first aldermanic form of government. If this information is in error, please advise us.

If you have any questions, please do not hesitate to call Ms. Delaney, the Attorney assigned to handle this submission. Her telephone number is Area Code 202-739-4421.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

EXHIBIT 3

CITY OF SHEFFIELD
Sheffield, Alabama

October 21, 1975

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

In re: City of Sheffield, Alabama

Reference is made to your letter of May 23, 1975, addressed to F. E. Draper, President, Board of Commissioners, Sheffield, Alabama, in regard to the referendum to change the existing commission form of government in this city to a mayor-alderman form of government.

We are enclosing the following documents requested by your letter of May 23:

1. Informational brochure on mayor-alderman form of government
2. Copies of various news articles relating to the change in the form of government
3. Certified copies of resolutions of the Board of Commissioners of the City of Sheffield
4. Opinion of Attorney General of State of Alabama dated August 19, 1968.

If you have any additional question, please do not hesitate to call me.

Yours very truly

ALMON, MCALISTER & ASHE

By /s/ Vincent McAlister
City Attorneys

VMc:avw
Enclosures

MAYOR/COUNCIL FORM OF GOVERNMENT FOR CITY OF SHEFFIELD, ALABAMA

PREFACE

On May 13, 1975, as a result of petition of the citizens of Sheffield, Alabama, said petition having been certified by the Probate Judge of Colbert County, a special election was called for the purpose of whether the proposition should be adopted to abandon the Commission form of government as it exists in said city currently and return to the aldermanic (Mayor-Council) form of government as it existed in said city at the time the commission form of government was adopted." The results of this special election showed 723 votes in favor of and 368 votes against the change in form of government. Therefore, Sheffield will change to the Mayor-Council form of government in 1976.

Some background information may prove helpful. Originally, Sheffield was incorporated by the Alabama Legislature on February 17, 1885 under a Mayor-Aldermanic form of government. Four wards were established, each from which two aldermen were elected by only the voters of that particular ward from which the candidate actually ran for office. Later in 1909, five wards were established. In 1912, voters of the city elected to change to the Commission type of government for which no wards were required. Three commissioners were elected from the city at large. This form of government (3 man commission) has been in effect continuously from 1912 and will officially end and change to the Mayor-Council form in October of 1976.

Title 37, Code of Alabama 1958 Recompiled Edition with amendments thereto contains the basic state statute which governs the creation, organization and functioning of cities in the Sttae of Alabama. Many changes have occurred in State Statute Title 37, since 1912 (date our city last had the Mayor-Council form of government). The major change affecting Sheffield has to do with the

distinction made by the legislature between how council forms of government operate in cities of under 12,000 population and over 12,000 population. The latest regular federal decennial census lists Sheffield's population as 13,115 persons. Many times, in order to find the state statute that applies to a particular city, extreme caution must be taken to assure that these differences in population are noted. One procedure may be used in a city of under 12,000 population where an exact opposite procedure would be used in a city with over 12,000 population.

As the years pass, we must be ever mindful that changes in population can mean certain changes in government automatically. For instance, when Sheffield's population reaches 20,000 or more, the councilmen are then elected by the voters of the ward from which they run for office rather than by the voters of the city at large. The Attorney General has ruled that a census cannot bring about a change in the form of a Mayor-Council form of government until the next general municipal election held. (See Title 37, Section 5 and Title I Section 14, Code of Ala.).

This information has been prepared by the undersigned in order to make the transition from Commission to Mayor-Council form of government easier and less confusing. It is strongly recommended that newly elected officials read Title 37 of the Code of Alabama, Selected Readings for the Municipal Official, 1972 edition by the LEAGUE OF MUNICIPALITIES OF ALABAMA and the handbook for Mayors and Councilmen prepared by John F. Watkins, Executive Director of the League of Municipalities.

It is hoped that many of our citizens will have the opportunity to read this. It just might be that this information may interest some of them in becoming candidates for one of the offices under this new form of government. Certainly, we now have a more representative type of government and also have an opportunity to streamline city government where the responsibility of carrying out functions of government rests upon the shoulders of an elected official, answerable to the people.

Less than 10% of all city governments are now operating under the old Commission form of government we have just abandoned. At long last, Sheffield has made a progressive move to give its citizens an opportunity to rise to great heights through increased participation of citizens in the handling of their own affairs as a city.

Date: July 4, 1975

F. E. DRAPER
Mayor, City of Sheffield

CHAPTER ONE

BASIC ORGANIZATION—1976

The basic composition of the new government calls for the election of nine (9) councilmen and a Mayor at an election to be called on the second Tuesday in August of 1976. This is the general municipal election year. Each shall serve for a term of four years commencing on the first Monday in October following the general municipal election and lasting until the first Monday of October four years later. (title 37, Section 34(25) Code of Alabama)

It is significant to note that under Title 37, Code of Alabama, the Mayor and Councilmen hold office for their terms, or until their successors are elected and installed in office; this evidences the legislative intent that there shall be a continuous governing body qualified to determine the policies of the city and to adopt ordinances and resolutions necessary for the operation of the city (Title 37, Section 1, Code of Alabama). The corporate status of the city never, therefore, ceases to exist.

CHAPTER TWO

ELIGIBILITY AND QUALIFICATION FOR ELECTIVE OFFICE

The Mayor and Councilmen shall be residents and qualified electors of the city and remain so during their terms of office (Title 37, Section 403, Code of Alabama). Any qualified elector of the city, who shall have resided within the city for at least three (3) months prior to the general municipal election may become a candidate (Title 37 Section 34(25) Code of Alabama). One exception to this is persons residing in an area annexed to the city within three (3) months preceding the election. The Attorney General to Hon. Norman K. Brown, Sept., 2, 1964, ruled persons in this category not qualified electors at the time of election, hence, not eligible candidates.

The Mayor and President of the Council can reside anywhere in the corporate limits of the city, however, the other eight (8) councilmen must reside in the ward from which they are elected to serve. If the Mayor or President of the Council establish a permanent residence outside the city during their terms, they must vacate their offices (Attorney General opinion to H. A. Kelley, Feb., 14, 1958).

The other eight (8) councilmen must not only be residents of the city during their terms but must also reside in the ward from which they are elected, or, they must vacate their offices.

It is interesting to note that those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any crime punishable by imprisonment in a state or federal penitentiary —those who knowingly, in this state or the U.S. have given a challenge with deadly weapons or those who have a judgment unpaid for official moneys due the U.S., this state, county or city, and, members on active duty in the Armed Services of the United States are all disqualified and ineligible to hold office under Title 41, Section 5, Code of Alabama.

Citizens who meet the above qualifications as candidates should contact the city clerk's office by the deadline date which will appear in the published announcement of the general municipal election. It is necessary that the notice of intent to run for elective office be signed prior to the deadline stated in the published notice of the election. Currently, there is no charge to any candidate executing this notice.

CHAPTER THREE

VACANCIES

MAYOR. In cities under 12,000 population, the council can fill the vacancy of Mayor from its own membership or from without its membership (Title 37, Section 428, Code of Alabama), but, in the case of Sheffield, where the

population is over 12,000 persons, the President of the Council shall succeed to the office of Mayor. The President pro tempore, elected by the council, as required by statute during the first organizational meeting of the council during the October general municipal election year, shall then in this case, assume the office of President of the Council (Title 37, Section 428, Code of Alabama). The Council cannot evade the responsibility of electing councilmen to fill vacancies by the calling of a special election by the voters (74 Q Rep Atty Gen 8). Where there are so many vacancies on the council that a quorum cannot be assembled, then, the Governor must fill these vacancies by appointment (Title 41, Section 177, Code of Ala; Atty Gen to Hon. Gilbert Watson Feb 23, 1958). Whenever the President of the Council is appointed Mayor when a vacancy exists, he need not go through the formality of resigning his seat on the Council. His office is vacated by operation of law when he assumes the duties of Mayor (Attorney General to Miss Thornberry Sept 4, 1966). Let us remember in passing from matters pertaining to vacancies in the Mayor's office, that the Mayor's office is considered an office of profit and his acceptance of a second office of profit operates as an automatic vacation of the first office according to decision of the Attorney General to K. L. McRae, Jul 8, 1957.

COUNCILMEN. Vacancies in the office of President of the Council are filled by the President pro tempore. Vacancies in the office of Councilman must be announced by the Council at the next regular meeting following the occurrence and filled at any subsequent meeting of the Council. The person so elected holds office for the unexpired term (Title 37, Section 427, Code of Alabama). The Council must elect a person to fill a vacancy on the Council. There must be a majority vote of the present Council to elect. Time is of essence and, whereas, the Council does not fill the vacancy at the same meeting where the vacancy is declared (opinion of Attorney General to Hon. Charles Belew Apr 30, 1957) it is strongly recommended that such vacancies be filled at the earliest possible time to prevent the crippling effect of not having a quorum to do business.

TEMPORARY ABSENCES. The President of the Council shall act as Mayor pro tempore with the power and authority of the Mayor during the time that a Mayor in a city of over 12,000 population is absent from the city, or is unable to fulfill his duties because of sickness or other good reason. When the President of the Council is absent in cities of over 12,000 population or more, the Council will have already have serving a President pro tempore who shall in this case perform the duties of the President of the Council during such absence (Title 37, Section 428, 429(3) Code of Alabama).

HABITUAL ABSENCE OF COUNCILMEN. The Council has the authority to compel the attendance of absent members in such manner and under such penalties as it may prescribe according to Title 37, Section 429(5), Code of Alabama. It is possible that a lack of a quorum due to a refusal of councilmen to attend meetings could seriously hamper the functioning of the Council. In the adoption of its rules of procedure the Council should seriously consider providing authority for less than a quorum in attendance at a regular meeting to compel the attendance of absent members in order to complete a quorum. The Council may not prescribe by ordinance that continued absence of a councilman would render him liable for automatic vacation of office according to an opinion of the Attorney General to Hon. Lorenzo D. Allred August 2, 1955. However, worthy of note is that continued absence of a councilman would render him liable to actions of the following nature: Willful neglect of duty under Title 41, Section 212 of the Code of Alabama—Impeachment for willful neglect of duty under Title 41, Section 178 Code of Alabama—Determination by courts that the office has been abandoned—Mandatory injunction by a court of equity compelling attendance to make a necessary quorum.

CHAPTER FOUR

WARDS

Years ago, Section 5 of the Code of Sheffield October 3, 1900, specified it to be the duty of the city council to divide the city into not less than four wards and that the

number of wards may be increased or diminished by the city council provided it did so within 90 days preceding a general municipal election year. This same procedure is suggested in a letter from the Attorney General to the Mayor of Sheffield on August 19, 1968, referring to Section 5 of Act No. 664 as amended supra.

Furthermore, Title 37, Section 426, Code of Alabama states that in cities of not less than 12,000 and not more than 19,999 inhabitants (Sheffield's population category), the council is composed of a Council President elected by the voters of the city at large and, if the city has seven wards or less (Sheffield has four wards), two aldermen or councilmen elected from each ward by vote of the city at large.

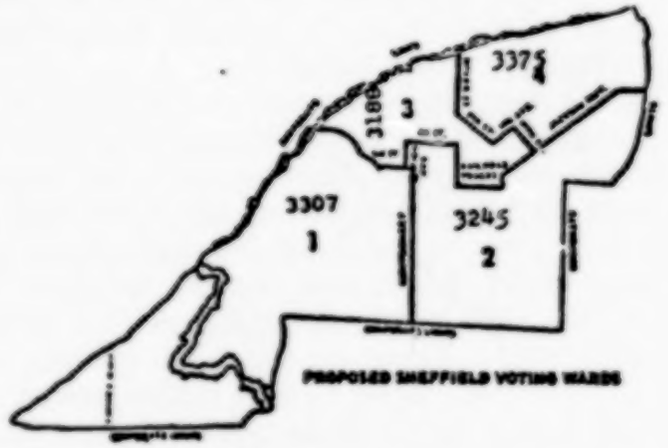
In dividing our city into four wards, it was felt initially that a recommendation from the Muscle Shoals Council of Local Governments was in order, since this body is non-political by nature and since it has at its disposal a vast quantity of data necessary in order to give equal consideration to all factors. The new law is clear that for all municipalities which elect councilmen from wards, regardless of the size of the city or system chosen, each ward must be composed of substantially the same population. Note the law does not require exact equality but substantial equality of population. Actually, this is a requirement of the federal Constitution. Also see Avery v. Midland County, Texas 88S. Ct. 1114 (1968). The necessary ordinances and change to the Code of Sheffield will be made to accomplish the dividing of the city into four wards within the prescribed time limits as required by law.

Since there will be two (2) Councilmen running for council seats from each of the four wards (this does not include the President of the Council) those councilmen are elected by a majority vote of the electors at large, and, since there will be more than one council seat available in each of the four wards, candidates must run for numbered places on the Council, for example, Place number One, Ward 2 or Place number Two, Ward 4, etc. The numbering of council places is for the purpose of election only and in no way affects the duties and responsibilities

or rank of the several councilmen (Title 37, Section 34 (22) Code of Alabama). Failure of any one candidate in not obtaining a clear majority of the total votes cast in the city at large, regardless of whether a candidate for Mayor, Councilman or President of the Council shall be sufficient cause for a run-off election in each specific elective office.

Presently, it is contemplated that one voting place with at least two voting machines shall be established for each ward. Absentee voting to be handled through City Hall at the City Clerk's office.

The following map contains the boundary lines and population of the four wards as recommended to the City Commission by the Muscle Shoals Council of Governments.



CHAPTER FIVE

PAY

MAYOR. The Mayor of Sheffield shall receive such salary as the Council may prescribe and the salary shall be fixed by the Council not less than six months prior to each general municipal election. This is done by an ordinance of a permanent nature. The present commission will set the first salary by the time required by law, thereafter, it shall be the responsibility of the Council. Section 440, as amended, by Act 738, Acts of Alabama 1967, page 1574 prescribes the minimum and a maximum an-

nual salary for the Mayor to be paid from the general fund of the city, based on population status of the city. For a city with over 10,000 population up to 24,999 (Sheffield's category) the maximum salary to be paid from the general fund is $12,000. The minimum salary for a city of this size is $5,000. It is contemplated that the salary to be paid the Mayor will be $11,400. annually from the general funds of the city. This will initially be put into effect by the present 3 man commission approving this action at least six months prior to the next general municipal election, such pay to commence on October 1, 1976. When the referendum vote was held to ascertain whether or not the new government was to be approved, information was established that the new pay of a full time Mayor would commence at $15,000. annually. In order to accomplish this, other action will be required as explained further in this Chapter.

The Council may not in any manner except as described in this paragraph require the Mayor to give full time to his duties as Mayor. The Council can require the Mayor to act as superintendent of the municipal utilities system and to give so much of his time thereto as the Council may direct (Attorney General to Hon. William Willis, Jan 21, 1960 citing Title 37, Section 440 of the Code of Alabama). Those municipalities, such as Sheffield, which own their light, power, water, sewer and gas systems may adopt a resolution *requiring* the Mayor to act as superintendent of such systems. In a city such as Sheffield, where the utility board is unincorporated, this action is accomplished by the governing body of the city. In cities where the utility board is incorporated, such utility board may by resolution employ the Mayor to act as superintendent. He shall be paid for his services, not to exceed $300. monthly. If his services were required on a full time basis with the utility department his salary could be increased not to exceed $600. monthly. The governing body may, at any time, dispense with the Mayor's services as superintendent of the utilities.

In order to assure a salary of $15,000. per year to the Mayor for full time service to the city, it is mandatory that the present commission adopt the resolution requiring the Mayor to serve as superintendent of the utilities department at a salary of $300. monthly. This action should be accomplished at least six months prior to the general municipal election of 1976 but will not become effective until October 1, 1976. The present pay awarded by the commission to the City Clerk for services to the utility board should be discontinued when the official currently holding that office retires in 1976 and should not be renewed to future city clerks so long as the Mayor is required to serve on a full time basis and part of his salary is paid to him by the utilities department as explained in this paragraph.

Under the action cited in this Chapter, the Mayor, under the new Mayor-Council form of government will receive $3,600. pay annually from the utilities department and initially $11,400. annually from the general fund of the city, or, a total of $15,000. annually commencing October 1, 1976 and, would be required to serve the city in a full time capacity. The Mayor is entitled to an official city vehicle during his term of office.

Some general comments regarding other pay factors for the Mayor would be that at least the minimum pay of $5,000. would be paid the Mayor, whether approved by the Council or not (82 Q Rep Atty Gen 46). It would not be legal for the Mayor to waive his salary. The Mayor is entitled to group insurance if he desires, however, social security deductions are not made nor payments made to the Federal Government therefor. The Mayor is entitled to legitimate expenses for official duties as prescribed by the Council in current instructions to the City Treasurer. Flat expense account is not recommended without an accounting. The Mayor is required to be bonded.

PRESIDENT OF THE COUNCIL. As head of the legislative body (Council) this position requires more work and attention than the regular council posts, therefore, at least six months prior to the date of the general municipal election of 1976, the present 3 man commission shall adopt an ordinance setting forth the pay of the President of the Council at $200.00 monthly. Title 37,

Sections 429 & 430 of the Code of Ala) state that at least two regular meetings must be held by the Council and they must be open to the public. Simply speaking, the Council President will receive $100.00 per meeting for each regular meeting not to exceed $2,400. annually in any event. There are no limitations for the salary of Councilmen set be state statute, including pay of the Council President.

COUNCILMEN. Unless the President pro tempore of the Council is elected to permanently fill a vacancy created in the office of the President of the Council, he shall be given the same pay as all other regular Councilmen. The pay for regular councilmen shall be set initially at $100.00 monthly or $1,200. annually. As has been stated, the present 3 man commission must set forth the pay for such councilmen at least six months prior to the general municipal election of 1976. Thereafter, the Council shall have this responsibility. State statute sets no limitations to pay for Councilmen. They should be required to attend at least two regular meetings of the Council each month.

Some comments, in general, pertaining to other pay factors for Councilmen are that they are entitled to reimbursement for expenses incurred by them in the performance of official duties required of them in the same manner as the Mayor is entitled. Social security deductions will not be made from their pay nor will the City match any social security deductions in these cases. Councilmen are entitled to group insurance as is afforded other officers and employees of the city. Councilmen are not required to be bonded.

It is not contemplated that that Councilmen, including the President of the Council receive transportation in kind (an automobile furnished by the city) on a regular day by day basis. Travel expenses will be allowed for official travel, when approved, outside the city while performing official duties.

Travel by personal conveyance within the corporate limits of the city while on official duty and travel to and from Council meetings is not subject to mileage reimbursement by the city. Councilmen may request city transportation on an as needed and when available basis but not when needed for the purposes of travel to and from Council meetings.

CHAPTER SIX

DUTIES AND RESPONSIBILITIES OF ELECTED OFFICIALS—MAYOR

Another important report required by law to be made to the council by the mayor is a written statement to the council at least once every six months showing the financial condition of the city (Section 444 of Title 37, Code of Alabama). However, remember that the mayor *must* secure an *audit*, as distinguished for rendering the above report, at least once a year. It has been previously stated in this pamphlet that the council has discretionary power to appoint an auditor. Such has been the case in the present form of government, but, Section 445, Code of Alabama, under the mayor-council form of government says that the council may not then make the apointment of the accountant who is to do the *annual audit*. It authorizes the mayor to enter into a contract fixing the accountant's fee at a reasonable amount without the approval of the council. Then, the council becomes legally obligated to pay a reasonable fee for such services, though it has not been authorized to take part in the agreement or contract. (See Atty Gen opinion to League of Mun. Nov 4, 1959). This does not apply in cases of a reaudit, or where audits are on a continual full-time basis.

The mayor has an important function in disbursing of municipal funds. All expenditures of municipal funds must be specifically approved by the mayor or by some other person designated in his stead by the council. This provision of law was to primarily have someone who would be able to approve disbursements in the mayor's absence (Title 37, Section 446, Code of Alabama).

In the event of a mob, riot, or tumult threatening the peace and safety of the city, the mayor is authorized to issue a proclamation closing all stores and establishments where arms, ammunition, dynamite, or other explosives are sold, forbidding the sale, lending, bartering or giving

of any such articles until such times as he deems these activities safe. (Title 37, Section 442, Code of Alabama) In this regard, the mayor should acquaint himself with the local civil defense Director for the county as well as the services that are made available through the Red Cross and the Local Alabama National Guard. Certainly, the mayor should keep his council abreast of all such emergencies since the councilmen are from the various wards of the city and can be a great help and quieting influence.

The Mayor has certain election duties that are required by state statute to be performed. When general municipal elections are held, he is required to see that a notice of the election is published; to see that election supplies are on hand; to prepare and provide ballots; to provide voting places; to provide absentee voting materials and ballots; and, to notify election officials. League of Municipalities Bulletin No. 232 and Title 37, Sections 34(22) (25) (26) (31) (33) (35) of Title 37, Code of Alabama contain specific info) The mayor must see that a list of registered qualified voters is prepared in primary elections. In event the mayor is a candidate for reelection, the council will appoint a disinterested person to act in his stead for the purpose of preparing the lists of registered voters.

The legislature has authorized the council to place the administration of certain detailed municipal activities under the supervision and control of boards appointed for that purpose. Some of the boards created for such special purposes are incorporated and have detailed statutory powers, and some boards are merely unincorporated agencies of the municipality. It is vitally important that the mayor maintain close contact with such boards so their activities can be coordinated with the activities of the municipal departments under his supervision and control. Furthermore, the mayor has varying degrees of control over such boards; he may be a member of the board, ex-officio, or the appointing authority for some of the members of the board.

The mayor is regarded as the ceremonial head of the city government; he should head up delgations to other

cities on important occasions; welcome dignitaries; conventions and civic gatherings. He should invariably put aside his political differences on these occasions and remember that his actions on these occasions are those of mayor, not those of a private citizen. Most important, he must maintain public relations with all news media in order to let his

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The Bureau of Public Information/Administration of the University of Alabama published in 1969 a pamphlet entitled "Government in Alabama" which makes very interesting reading concerning the duties and responsibilities of the elected officials. On page 61 of the book appears the following remarks, "There are approximately 380 incorporated municipalities in Alabama and most of them are governed under the mayor-council form. The principal characteristic of this plan is that the powers of the municipal governing authority are divided between an elective mayor and an elective council. The mayor serves as the formal head of the municipal government and as the chief executive officer; the council serves as the legislative policymaking unit of the municipal government."

In his capacity as chief executive officer, the mayor has general powers of supervision over all other officers and the affairs of the municipality, except as may be otherwise provided by law. He appoints all officers whose method of selection is not otherwise provided for, and he may remove any officer appointed by him alone. If any officer is selected by the council, or appointed with the approval of the council, the mayor may remove the officer temporarily, and the removal becomes permanent upon the council approval of the action. It is advised that civil service regulations be read and understood thoroughly before taking action to remove civil service employees or officers coming under local civil service boards. The council normally passes on to the mayor the authority to enter into certain type contracts and gives him power to sign deeds in the name of the city. It is the mayor's responsibility to see that all contracts are properly performed. He may require reports from other municipal officers and he, himself, regularly reports to the council.

Even though the mayor does not sit with nor have a vote on the council, he should be required by the council to attend at least one council meeting each month in order that they may keep abreast of the current problems and accomplishments of the city on a regular basis. It is the mayor's responsibility to see that an annual audit of the financial records of the city is made by an accountant. The mayor should present the first draft of the proposed city budget to the council at such time as it would be ready for adoption by the beginning of the fiscal year (By Nov. 1st). Also, another reason for having the mayor attend at least one monthly meeting of the council would be to have him available, in person, to answer inquiries of certain councilmen relative to matters pertaining to that councilman's duties in his appointive position on the various committees to which appointed by the President of the Council. The mayor is required to make a written report to the council at the first regular meeting each month of the fines and costs remitted, sentences commuted, and pardons and paroles granted by him during the preceding month, stating the reasons therefor. (Section 599, Title 37, Code of Ala.).

As stated above, a report in writing must be made to the council on a monthly basis, regarding fines and pardons and paroles. Title 37, Section 599, Code of Alabama gives the mayor the authority, acting under his duties as chief executive to remit fines and costs imposed by the recorder or the court to which an appeal was taken for violation of a municipal ordinance. He also has the power to pardon those convicted and sentenced by the recorder for violation of municipal ordinances. And, he has the power to authorize and direct the discharge on parole of any person under sentence for violation of a municipal ordinance without granting a pardon. Upon failure of a person to obey the terms of his parole, to be determined by the mayor, the mayor has the authority to direct the rearrest of such person who shall be taken into custody. This authority does not include power to remit forfeitures levied against sureties on appearance bonds by the recorder. (Atty Genl to Hon. Richmond McClintock, July 17, 1957)

As can be seen from the Chart at the end of this chapter, the citizens as voters actually control the destiny of the city by electing persons of their choice to guide and legislate and establish policy. The Council is the ultimate source of power in the Mayor-Council city. It can be said that the Council is a body of local representatives from each sector (ward) of the city brought together to pool their collective wisdom for guidance of the city. The success of the Council depends upon the sincerety used by the voters in their selection of the correct representatives for office and upon the willingness of those elected to give of their time, knowledge and experience.

In a large measure, the success of the Council's efforts depends upon the Mayor and the other officers and employees of the city who, under direct supervision of the Mayor, administer the policies and decisions of the Council. The Council should solicit the advice, recommendations and viewpoints of the Mayor who is the chief executive officer of the city under the Mayor-Council government. Both the Council and the Mayor should remember that the Mayor is also an elected official and represents strong viewpoints of the citizens, and to this end, it is of vital importance that communication between the Mayor and the Council be maintained at all times. By this, it is not being suggested that the Council should give the Mayor a free hand nor would it be in keeping with sound administration for the Council to invade the executive powers of the Mayor. Where differences arise a conference is suggested as a common meeting ground.

Even though the Council is considered the ultimate source of power, it may not adopt any ordinance or resolution requiring the Mayor to issue written instructions or orders to employees or officers of the city, nor may it require department heads to answer directly to the Council for their actions. The chart clearly shows the line or channel through which all administration of the city must travel. The Attorney General in a decision on Nov 5, 1957, to Hon. Chas E. McConnell has ruled further that the Council may not assume direct control over the Police, Maintenance (Street & Sanitation) or the Building Inspection Departments.

VOTING-QUORUM WITHIN THE COUNCIL. In cities of 12,000 or more population the President of the Council presides over the Council. The President of the Council is a member of the Council and is entitled to vote upon issues coming before that body but the Council President does not have a second vote in event of a tie. Remember too, that in cities of over 12,000 population the Mayor does not sit with nor vote on council matters so if there is a tie, the measure fails for the lack of the required majority. A majority of the whole number of members the city is entitled to have on the Council shall be necessary to constitute a quorum (Title 37, Section 429(2)). Insofar as Sheffield is concerned this would require five members since the total number of Councilmen authorized is nine, including the Council President. An exception to this requirement would exist where ordinances or resolutions vetoed by the Mayor have been returned to the Council. Such measures may be passed over the Mayor's veto but need a two-third (2/3) vote of the members elected to the Council by yea and nay vote, all of which must be spread upon the minutes of the Council meeting indicating by name each vote. All ordinances of a permanent nature fall in this category and when vetoed by the Mayor require 2/3 vote to override the veto.

No Councilman may vote on any question in which he, his employer or employee has a special financial interest at the time of voting or was so interested at the time of his election. Violation could mean removal from office.

There is no provision in the statutes which compel a councilman to vote on every issue called to question by the Council. A member can change his vote up to the time the vote is finally announced. After that he can only change it if approved by the entire Council present. It is wise to vote, since voters elect Councilmen to speak out for them, however, sometimes conflicts of interest whether moral or financial do become a factor.

While covering the more important aspects of duties of Councilmen we cannot overlook one very hard task which will befall each Councilman at some time during his term of office. Even though a Councilman may be

opposed to certain resolutions or ordinances which have been adopted by the Council, it is his duty to uphold the majority vote of the council and to give his wholehearted cooperation to the Mayor of the city when such resolutions or ordinances are passed down to the Mayor to be carried out.

It is contemplated that a room shall be made available to each Councilman at city hall where he may use same to read his official mail and carry on some of his required duty as a member of certain committees of the city. The city clerk's office personnel will assist Councilmen with administrative matters such as making official stationery available, looking up documents needed, obtaining official publications, verifying certain records, including minutes of previous Council meetings and furnishing financial information upon request. This room, though it will be used by other Councilmen should serve a useful purpose and will be available for consultation between citizen groups and their ward Councilmen.

MEETINGS OF THE COUNCIL. There must be at least two regular meetings of the Council, open to the public, each month. (title 37 Section 429(3) & Section 430, Code of Alabama) The time and place for the meetings should be set at the Council's first organizational meeting. The Sheffield Library and the Utilities Department have both offered their facilities for the purpose of an adequate meeting place for the Council.

Adjourned meetings are where the Council at its regular meeting may adjourn until a particular time. When an adjourned meeting is commenced, it is merely a meeting continued as though it were the original meeting.

Special meetings may be called when the President of the Council feels that public interest merits such a meeting. Also, two Councilmen or the Mayor may request the President of the Council to call a special meeting. This must be done in writing and if the President of the Council refuses to call the meeting, those making the request have the right to do so (Title 37, Section 430, Code of Alabama). Due notice of such a meeting is required to be given other Councilmen.

The Council has the right and the authority to compel attendance of meetings by Councilmen and it may prescribe penalties for not doing so (Title 37 Section 429(5) Code of Alabama) (See Title 41, Sections 212 & 178 Code of Alabama for types of penalties).

Since the President of the Council has the responsibility for seeing that the order of business at any Council meeting is is expedited, he must see that the meetings are orderly. An agenda should be prepared before each meeting by him and it should be distributed in advance to other members of the governing body; he should begin each meeting at the appointed time and stick to a time schedule as nearly as possible. Nothing discourages the attendance of the hard working, civic minded Councilman more than a long, drawn out council meeting which wanders from city business. It is wise to see that the press gets advance copies of the agenda. The Council President is the only person who can legally recognize citizens who are attending a meeting and who wish to address the Council. When large groups are in attendance, the President should request that one or two spokesmen speak for the entire group; he should maintain order and let no others speak while the Council is being addressed. In short, he must be a diplomat not only to his Councilmen but to citizens who are visiting for the purpose of being heard by the Council.

ORGANIZATION CHART FOR MAYOR-COUNCIL GOVERNMENT SHEFFIELD, ALA.

CODE
1 Full time, w/pay fr. City Gen. Fd.
2 Part time, w/pay fr. City Gen. Fd.
3 Separately funded, either by State, Federal funds, and or by appropriation from City Gen. Funds
4 Part time, no pay

CITIZENS ELECT 2 COUNCILMEN EACH FROM 4 WARDS OF EQUAL POPULATION PLUS ONE COUNCIL PRESIDENT AND ONE MAYOR FROM THE CITY AT LARGE.

COUNCIL OF 9 POOLS ITS COLLECTIVE WISDOM FOR GUIDANCE OF CITY. ENACTS ORDINANCES AND DETERMINES POLICY. IS THE LEGISLATIVE BODY OF GOVERNMENT. 2

NOTE: All Officers and Employees on this line are hired, fired and promoted by Civil Service board upon recommendation to the Council.

MAYOR SERVES FULL TIME AS CHIEF EXECUTIVE OFFICER CHARGED WITH GENERAL SUPERVISION AND CONTROL OF ALL DEPARTMENTS, PROGRAMS AND FACILITIES. MANAGES CITY AFFAIRS. 1

- Fire Department 1
  - Fire Marshall also Bldg. Insp
- Police Department 1
  - Recorders Court 1
    - Judge 2
    - Prosecution Attorney 2
- City Clerk's Office 1
  - Treasurer -Finance 1
  - License Inspector 1
  - Personnel Administrator 1
- City Attorney Council/Apptd. 2
- City Auditor Mayor/Apptd. 2
- City Engineer Council/Apptd. 2
- Street & Sanitation Department 1
- Cemetery Department 1
- Building Inspection Department 3
  - Code Enforcement 3
    - Electrical Inspection 3
    - Plumbing Inspection 3
- Urban Renewal & Community Development Department 3
- Utility Board (5) Council/Apptd. 3
  - Utility Department 3
- Board of Education Council/Apptd. 4
  - Schools 3
- Civil Service Board (3) Council/Apptd. 2
- Library Board Council/Apptd. 4
- Medical Clinic Board (3) Council/Apptd. 4
- Adjust & Appeals Board (5) Council/Apptd. 4
- Recreation Board (5) Council/Apptd. 4
  - Parks & Recreation 3
- Miscellaneous Regional Board Mayor/Apptd. 4
- Planning Board (9) 3 By State/6 By Mayor 4
- Citizens Advisory Board (5) Mayor/Apptd. 4
- Housing Author Board (5) Mayor/Apptd.
  - Sheffield Housi Projects

CHAPTER SEVEN
THE ORGANIZATIONAL MEETING

Certainly it is apparent that each of the two regular meetings required by statute to be held monthly are important and the manner in which they are conducted will have a lot to do with an orderly and successful term for each of the elected officials, but, we cannot overlook the importance of the first organizational meeting which must be held on the first Monday in October of 1976 for our new government by Mayor and Council. Each general municipal election year calls for the elected officials to gather for this type of meeting. It is what is simply implied, an organizational meeting. (Title 37, Section 429(1)). Bear in mind that another two *regular* meetings are required to be held in October in addition to the organizational meeting.

The city clerk's office should notify each elected official after he has been elected to the office (including the Mayor) concerning the time and place of this meeting. Each of the newly elected officials must be sworn in to their respective offices by having an oath administered to them, orally, by the city clerk. In addition, there are other important aspects to this oath which involve compliance with law. After the city clerk has administered the oath of office to the President of the Council, the President of the Council should then direct the city clerk to administer the oath of office to the other eight Councilmen and then to the Mayor. After a few remarks to the Council members, the Mayor would normally retire from the council room, at which time, the Council President should officially announce that the meeting is in order (if a quorum is present) and proceed to consider the following organizational business, which is listed below the information on oath of office.

This oath of office is required by Title 41, Section 24 and Title 41, Section 26, Code of Alabama, and is the same for the Mayor, the President of the Council and the other 8 Councilmen; they shall sign the oath; it is normally given, in public, at the first meeting of the Council in October following each general municipal elec-

tion as described above; any person who enters upon the duties of his office without first executing and filing the oath of office shall, upon conviction, be fined; the oath (signed in writing) must be filed with the Probate Judge of the County.

OATH OF OFFICE

"I, (*name of elected official*), solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, so help me God."

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With all the Councilmen sworn in, the meeting called to order by the President of the Council, the following is suggested as the agenda for this meeting:

1. Election of a President pro tempore by the Council.

2. By Council vote, establish a time and place when and where regular meetings of the Council will be held.

3. Adopt an ordinance establishing the rules of procedure to be observed in the conduct of its meetings. This should be prepared by the President of the Council and offered for adoption by him to the Council for its vote. Chapter 5, page 79 of the Handbook for Mayors and Councilmen and Title 37, Section 429 Code of Ala are highly recommended as guidelines for the type of ordinance and for other items that may be acted upon at this first organizational meeting.

4. The Council should then be notified by the Council President of his appointments to the standing committees. These appointments are generally made by the Council President, however, objections may be raised to any recommendation and same may be voted upon by the Council, if deemed appropriate by the President of the Council.

5. Other cities, with population over 12,000 generally appoint standing committees, consisting of 3 Councilmen on each committee, as follows:

(a) A standing committee called the Executive, Finance and Ordinance Committee composed of 5 Councilmen as follows: The President of the Council to act as Chairman and one Councilman from each of the four wards.

(b) A standing committee called the Police Department Committee, composed of 3 Council members.

(c) A standing committee called the Fire Department Committee, composed of 3 Council members.

(d) A standing committee called the Street, Sanitation and Cemetery Committee, composed of 3 Council members.

(e) A standing committee for Public Relations and for Liaison with all city Boards, composed of the following Councilmen: One Councilman from each of the four wards.

(f) All Councilmen should realize that they serve as members of the Urban Renewal and the Community Development Boards by virtue of their office, however, this should be a matter of appointment at the organizational meeting. Note that matters under the cognizance of the Building Inspection Department are under this Board, however, the administrative responsibility of that department rests upon the shoulders of the Mayor.

6. It is important to take note that the Mayor of cities with less than 12,000 population would make these committee appointments but since Sheffield has a population in excess of 12,000 persons the Council President makes these committee appointments. Each committee has the responsibility for the oversight of the municipal functions falling within its jurisdiction and makes policy recommendations to the council regarding these functions.

7. Following the first organizational meeting at which the standing committees are appointed, the first regular meeting would be the proper place at which the council, by vote, would make those appointments to various boards where the terms of various members have expired and to make the appointments of various officers to head up the department of the city. In cities of over 6,000 population, the Council must elect a city clerk-treasurer or a separate city clerk, a license inspector and another person as Treasurer. Remember too, that state statute calls for certain board appointments to be made by the Council and other to be made by the Mayor. The Council possesses a rather considerable power of appointment. It has the discretionary power to appoint an auditor. Moreover, the Council provides for a Chief of Police, a Chief of the Fire Department and the Superintendent of the Street and Sanitation Department. Officers, under Civil Service, are first appointed by that Board.

8. Salaries of all officers must be fixed by the Council and this action should be accomplished at the first regular meeting following the organizational meeting. (Title 37, Section 409, Code of Ala).

9. The Council has control and management of the finances and all of the property, real and personal, belonging to the municipality, unless otherwise provided by statute. (Title 37, Section 422, Code of Ala) There are no legal requirements that make it mandatory for a city to operate on a budget but municipal administration has become so complex that most of our cities have adopted the practice of operating on a budget. Budget is the process of financial planning. It involves detailed planning of revenues, expenditures and borrowing for a fiscal period. The usual practice is for the Mayor to submit recommendations amounting to a tentative budget for the coming fiscal year and then for the Council, in meeting with the Mayor as budget officer, to go over the propose budget item by item, after which the Council has the duty to adopt an approved budget. The approved budget should be ready for adoption, together with any required

ordinances for additional revenues or expenditures, no later than the first regular meeting of the Council.

10. The Council has the power to enter into contracts between the City and others and is authorized to adopt ordinances and resolutions which are not inconsistent with the general laws of the State.

CONCLUSION

Any newly elected councilman or mayor owes it to the voters who elect him to office, to immediately, upon his election begin studying the various local ordinances. He should study the applicable references to the Code of Alabama as it relates to the performance of duties by elected officials. The League of Municipalities in Mongomery, Alabama, can be most helpful to newly elected officials. Their two handbooks titled "Handbook for Mayors and Councilmen" and Selected Readings for the Municipal Official are highly recommended as good material with easy reading and understanding. Many more restrictions as well as powers are contained in state statute which have not been covered in this pamphlet. We have attempted, in logical sequence, to give you enough information and legal background to enable you to see the magnitude of the task of serving your city well.

The City of Sheffield now has the opportunity to forge ahead and once again develop the leadership which is so much needed in our Muscle Shoals area. You will find that if you are elected by the voters of your city to lead, guide and direct their affairs of government, a real deep rooted desire will grow to do the best job you can for them. Remember, there is nothing more sacred than the trust they have placed in you to represent them.

Council Proposes Sheffield Voting Wards - 2 July 1975 -

By BILL JARNIGAN
Times-Daily Writer

A proposed division of Sheffield into four voting wards for the impending mayor-council form of government has been presented to the city commission by the Muscle Shoals Council of Local Governments.

Each ward will contain an average population of 3,278 persons, according to the proposal by the MSCOLG Planning Division.

Ward One, with 3,279 persons, will include Southwest Sheffield, Rivermont, the village area, and the annexed area.

In Ward Two, there will be 3,245 people from Southeast Sheffield, the downtown business district and the industrial area south of Jackson Highway.

There will be 3,216 persons in Ward Three which will include Northwest Sheffield, which should have an increase in population when more Urban Renewal houses are completed.

The thickly-populated Riverbluff area in Northeast Sheffield will be Ward Four with 3,375 persons.

The proposed wards must be approved by the city commission and the Department of Justice before being put into effect.

The primary source of population distribution was taken from the 1970 census of Sheffield, which is divided into four census tracts, Richard Metcalf, MSCOLG planning director, said.

Other data sources considered were "existing land use maps and data, zoning information, enumeration districts information and traffic zone data as compiled by the State Highway Department during 1974," Metcalf said.

"It should also be noted that like socio-economic characteristics were considered as well as the fact that some wards should have more growth than others in future years," he said.

The commission must now consider the proposal, Mayor F. E. (Buddy) Draper said.

The MSCOLG had been chosen to draw up the proposal, because it is a non-political, unbiased group that had the necessary information and tools to design the ward division map, Mayor Draper said.

Draper also said that he was preparing an information pamphlet for voters and candidates about the mayor-council form of government and the wards.

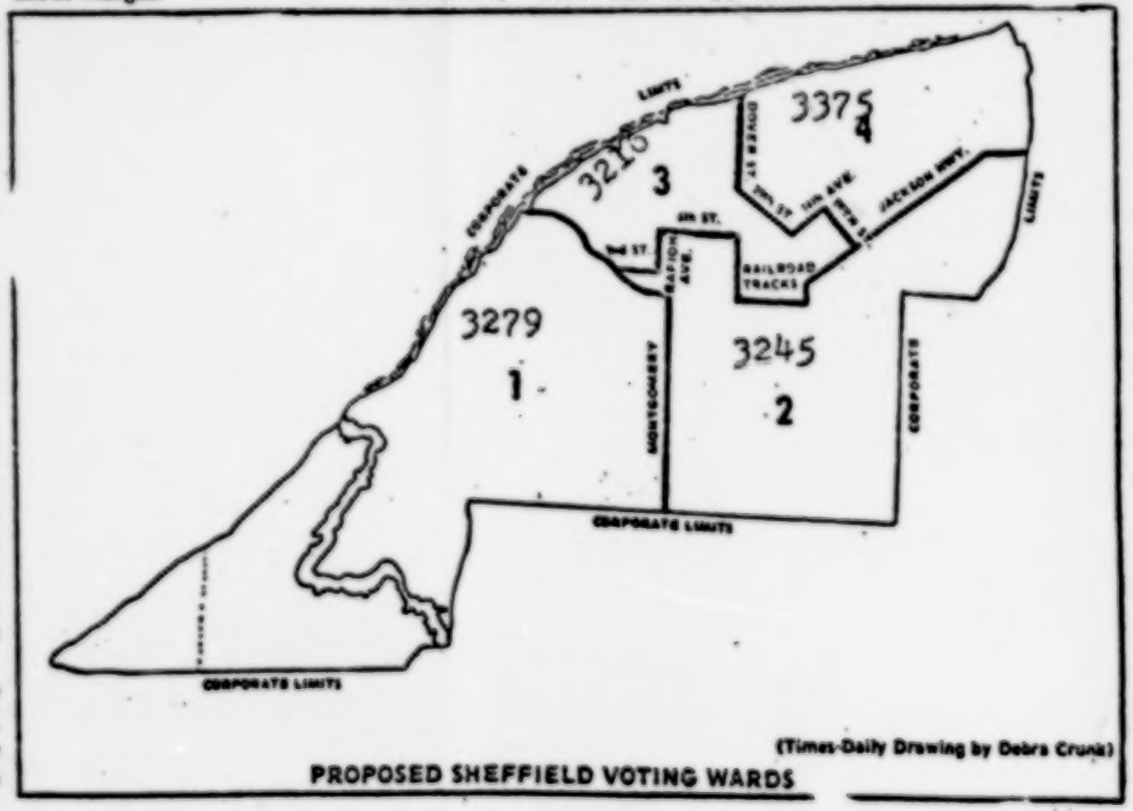
The wards, however divided, will be subject to revision with each new census, he said.

Sheffield will change its commission form of government to a mayor-council form on Oct. 1, 1976, after an election in August of that year.

Two councilmen from each ward will be elected at-large. A president of the council, to preside over council proceedings, will be elected at-large and can be from any ward.

The nine-man council will be the legislative body of the city. The mayor, who will have no vote in council proceedings, may veto permanent legislation. His veto may then be overturned by a two-thirds margin.

The mayor, who will also be elected at-large and will serve fulltime, will serve as administrator with various department heads coordinated under him.



(Times-Daily Drawing by Debra Crunk)

PROPOSED SHEFFIELD VOTING WARDS

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ing Commission.

Sheffield Change Gets Support

A proposal to change Sheffield's form of city government drew added support and some disagreement today from present and former city officials.

The change has been under discussion recently in official circles.

Wednesday, Mayor F.E. "Buddy" Draper said he would support a change from the commission form of government to a council.

"I would rather see the consolidation of the three Colbert County cit[illegible] Draper said today. "Since [illegible]ars to be a long way off, [illegible] support a change in Sheffield's own type of government to a council."

Public Safety Commissioner Don P[illegible]les also supported the idea. Huggles said the change would provide better representation of the city and would be a more efficient means of handling city affairs.

As proposed, the council would be composed of at least five councilmen from separate districts in the city and a full-time mayor.

Presently Sheffield city government is composed of two commissioners and a mayor, all of who are elected at large and not from separate districts.

Commissioner B.F. "Buddy" Walden said today he sees no advantage in changing from a commission form to a council.

"Considering the financial bind the city is now in, I can't see paying the added cost of additional people," he said.

The council form would mean an increase in the number of city governing officials.

Commissioner Walden, who is also a former mayor of Sheffield, pointed out that the proposal has been defeated by the voters in previous referenda.

(Continued On Page 2)

Area Lau[illegible]

"As ye d[illegible] these my br[illegible] Me..."

Taking h[illegible] words of Jo[illegible] Book of Ma[illegible] Jones, spea[illegible] County Un[illegible] urged sup[illegible] business

"Peop[illegible] is all ab[illegible] people w[illegible] United W[illegible] doing the[illegible] the work[illegible] King of[illegible] said.

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Fler[illegible] temp[illegible] [illegible] S

Sheffield Change

(Continued from Page 1)

Three other former mayors of Sheffield today said they would support a change to a council.

Paul Saywell, a former mayor and commissioner, said "I was definitely opposed to it in the past.

"However, I'm now beginning to lean towards the idea."

Saywell said Birmingham's change to a council form several years ago seems to have improved the operations of the city.

He said he believes the full-time management of the city and increased representation could do the same for Sheffield.

Leonard Beard, who was a mayor and commissioner from 1948-1963, said city affairs have become increasingly complex, and "In my judgment, the time has come to give serious consideration to changing."

He said he believes a council could provide better representation and management of city business.

Lewis Timberlake, who was a mayor of Sheffield for five years, said "I believe it's an excellent idea. I would support it 100 per cent."

He added that the increased representation and management could "Be an answer to many of our problems."

State W[illegible]er

[illegible]s forecast

S[illegible]

Toda[illegible]

Muscle Shoals Com[illegible] Civil Air Patrol [illegible] senior members mee[illegible] at 7 p.m. at old T[illegible] Muscle Shoals Airp[illegible] R. Hardiman will d[illegible] Greek and Turkish

Princ[illegible] Corre[illegible] Stater[illegible]

Leighton [illegible] Principal J.H. [illegible] today that the predominantly bl[illegible] trustee was qu[illegible] Tuesday.

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Council Proposes Sheffield Voting Wards - August 2 1975 -

By BILL JARNIGAN
Times-Daily Writer

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...Need For Consideration

A proposal to change the form of Sheffield's city government deserves serious consideration not only by the citizens of Colbert County's largest city but by those of surrounding municipalities as well.

Two of the three members of the Sheffield Commission—Mayor F.E. (Buddy) Draper and Public Safety Commissioner Don Ruggles—favor a transition from the commission form of government to that of mayor-council.

We are inclined to agree.

In fact, we venture the opinion that all four of our Quad-Cities have outgrown the three member governing body system.

Under the commission system, only two votes are required for passage of a city issue.

Under such a situation, there is little room for the wider representation allowed under the mayor-council government.

There has not been a pattern of "teaming" by any of the commissions so far, but under a two to one 'majority,' it is entirely possible.

A more divergent representation would preclude only two people deciding issues.

An example is Birmingham, the state's largest city, which was governed by a three-member commission until 1962 when the commission was abolished in favor of a mayor-council government.

There were three propositions on the Birmingham ballot:

1. Continuation of the three-member commission.
2. Full-time mayor and part-time city commissioners.
3. City manager and unspecified number of part-time council members.

The contest was not even close. The mayor-council plan was overwhelmingly approved.

Actually, the Birmingham vote was more of a move to oust the incumbents. All three of the commissioners were subsequently defeated when they ran for the council.

Such is not the case in Sheffield. Two of the three commissioners favor the change. The proposal getting the most official support in Sheffield would call for a full-time mayor and either five or seven councilmen.

Birmingham has a nine-member council, but, of course, Birmingham is a much larger city.

How has the Birmingham plan worked over the past 12 years?

"There is really no comparison," reports Ted Bryant of The Birmingham Post-Herald. "Without question, the mayor-council plan was the best thing to happen to Birmingham in years.

"Under the three-men commission, there were really no decisions — just agreements. There was rarely any difference of opinion."

Bryant and other knowledgeable observers firmly believe the city's residents are much better governed by the council, since the larger membership of the policy-making body brings municipal government closer to the grassroots.

Birmingham is but one example of hundreds of cities, large and small, which have benefited from abandoning the long-obsolete commission system.

Officials and citizens of all the municipalities in the Shoals area should take a long, hard look at the mayor-council form of government.

Thoughts

O great and mighty God whose name is the Lord of hosts whose eyes are open to all the ways of men, rewarding every man according to his ways and according to the fruit of doings — Jeremiah 32:19.

"Life is like a cash register, in that every ...

PAGE 5

Mayor-Council Club

Latest of major Alabama cities to change its form of municipal government is Montgomery.

The Capital City moves from its present three-commissioner governing body to mayor-council in October, 1975.

An election, likely next August, will be set by the Montgomery county probate judge and a mayor and nine councilmen will be named.

The council was substantially favored over the present commission, after a heated campaign, in what was considered an upset on the general election ballot last week. Thus Montgomery joins Birmingham and Huntsville among the larger Alabama cities to abolish the three-member commission governing body.

If Birmingham is an example, the change will be much fo the better.

Under the old commission, Birmingham was a troubled city, a city torn apart. Under the council, Birmingham has shown so much improvement that it has been designated an "All American City."

There is no question that a multi-member council, selected by districts or wards, provides the citizens with much better representation.

The commission designates specific duties — one member usually is in charge of public safety (police and fire), the other street and sanitation, the other finances, etc.

Council members are responsible directly to the people for all aspects of city functions.

Whereas the commission is tailormade for buck passing, i.e., 'that's not in my department,' the councilperson must be answerable for everything that goes on in city government.

There is a movement now underway in Sheffield to bring to a vote a proposed city government change.

Under consideration is a proposal to abolish the present three member commission and replace it with a fulltime mayor and eight councilpersons.

The city would be divided into four wards of equal population and two representatives from each would be elected by the city at large.

The elected mayor would not vote, but would be fully responsible to the council.

If approved, the new plan would become effective in October, 1976, with the current commission serving until then. The vote would be part of the August, 1975 city election.

Council, with members responsible to residents of their respective wards, brings government much closer to the people.

There are some segments of the population who have little or no representation under the commission system.

And the larger governing body, if nothing else, dilutes the possibility of cozy arrangements where two out of three votes can prevail in important decisions.

A petition is being prepared and will soon be in circulation, sponsors report.

Mayor-council certainly is an issue worth voting on.

State Tells DeKalb What To Do

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RESOLUTION

BE IT RESOLVED by the Board of Commissioners of the City of Sheffield, Alabama, that the City Attorney be, and he is hereby, authorized to prepare the notice of special election to be held on May 13, 1975, to vote on the change of government from the commission form to the mayor-council form and to duly advertise the same in accordance with the requirements of the laws of Alabama.

Passed and adopted this 4th day of March, 1975.

F. E. Draper, President
Board of Commissioners

Donald F. Ruggles
Commissioner

B. F. Walden
Commissioner

CERTIFICATE

I, E. S. Enoch, the duly qualified, acting and appointed City Clerk of the City of Sheffield, Alabama hereby certify the above and foregoing resolution was duly passed and adopted by the Board of Commissioners in regular session at the City Hall in the Commission Chamber on Tuesday the 4th day of March, 1975.

WITNESS my hand and seal of said City on this the 11th day of June, 1975.

/s/ E. S. Enoch
City Clerk

SEAL

DECLARATION OF RESULT OF SPECIAL ELECTION

WHEREAS, pursuant to notice heretofore given and pursuant to a proclamation heretofore made by Mr. Draper, in accordance with a law, a speical election was held in the City of Sheffield, Alabama, the question being whether the proposition to abandon the Commission form of government in said city and return to the aldermanic form of Government in said City as it existed in said city at the time said commission form of government was adopted, should be adopted, and

WHEREAS, said question was submitted to the qualified electors of the City of Sheffield, Alabama for said special election held on the 13th day of May, 1975, and at the regular voting places in the City of Sheffield, Alabana,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Sheffield, Alabama has on the 13th day of May, 1975, met in regular session in the usual place of meeting, and sitting as a canvassing board, has canvassed the returns of said election and declare the results of said election to be as follows:

BOX NO.	YES	NO
Box No. 1	90	89
Box No. 2	56	51
Box No. 3	90	59
Box No. 4	177	7
Box No. 5	138	72
Box No. 6	23	28
Box No. 7	149	61
Absentee		1
TOTAL	[illegible]	368

The Board of Comm[illegible] the City of Sheffield, Alabama sitting as such canvassing board, does hereby declare the results of such election to be in favor of the proposition to abandon the commission form of government and return to the aldermanic form of government as it existed at the time said commission form of government was adopted.

CERTIFICATE

I, E. S. Enoch, the duly qualfieid, acting and appointed City Clerk, of the City of Sheffield, Alabama hereby certify that the above and foregoing resolution was duly passed and adopted by the Board of Commissioners in regular session at the City Hall in the Commission Chamber on Tuesday the 13th day of May, 1975.

WITNESS my hand and seal of said city on this the 10th day of June, 1975.

/s/ E. S. Enoch
City Clerk

SEAL

STATE OF ALABAMA

OFFICE OF ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36104

August 19, 1968

Honorable B. F. Walden
President
Board of Commissioners
City of Sheffield
Sheffield, Alabama

Dear Mr. Walden:

Reference is made to your request of August 7, 1968, for an opinion of this office, which reads as follows:

"A petition has been certified to me by the Judge of Probate of Colbert County, Alabama, pursuant to the provisions of Article 3 of Title 37 of the Code of Alabama. Said petition seeks to have an election called asking that the proposition of abandoning the commission form of government of the City of Sheffield be submitted to the voters of said city.

"The City of Sheffield has had a commission form of government since 1912, and it is essentially the form of commission government provided for in Title 37 and not by a special legislative act.

"At the time the commission form of government was adopted by Sheffield in 1912, the city had a mayor and aldermen form of government and was divided into four wards with eight aldermen (two from each ward). Since 1912 other areas have been added to the city's corporate limits and the population pattern has changed extensively.

"It is requested that you advise me of the following:

"1. When should the election provided for in Article 3 of Title 37 be called?

"2. In the event the voters of the City of Sheffield vote to abandon the commission form of government, how many aldermen would be appointed by the governor?

"3. How long would the officials appointed by the governor hold office?"

Your purpose will be better served if you have from me a general discussion of the applicable law rather than answers to your specific questions.

All elections held in the City of Sheffield must be conducted in accordance with Act No. 664, Acts of Alabama 1961, page 868, as amended by Act No. 166, Acts of Alabama, Regular Session 1965, page 233. See Quarterly Report of Attorney General, Volume 126, page 8. Act No. 664, as amended, supra, provides that notice be given by the Mayor of all elections held within the municipality. Under the provisions of Sections 3 and 4 of said statute, when the notice is of an election to be held on the second Tuesday in a month, such notice shall be published on or before the second Tuesday of the second month preceding the month in which the election shall be held. Opinion to Honorable Robert M. Field, City Attorney, City of Anniston, under date of May 2, 1968.

Therefore, the earliest date on which the election to abandon the commission form of government in the City of Sheffield may now be held is on October 22, 1968, and the notice of such election must be published on or before August 27, 1968.

The statutes which control the abandonment of a commission form of municipal government in this State are codified in Title 37, Chapter 4, Article 3, Code of Alabama 1940. In the event that the electorate of the City of Sheffield votes to abandon the commission form of government said municipality will return to the mayor-council or aldermanic form as it existed in said City at the time the commission form of government was adopted. See Title 37, Section 124, Code of Alabama 1940.

Therefore, in the event of such change the City of Sheffield will be governed by a mayor and eight alder-

men. Two aldermen will be elected from each of four wards.

It should here be pointed out that the commission of the City of Sheffield is authorized to divide said City into wards at any time not within three months of an election. See Section 5 of Act No. 664, as amended, supra. The City should be divided into four wards from which the eight aldermen may be selected. These wards should be substantially equal in population.

Act No. 71, Acts of Alabama 1959, page 477, should be considered in connection with your request. Under the provisions of said statute no change from the commission to the mayor-council form of government directed by vote of the electors of a municipality shall become effective until October 1 of the general municipal election year next following the election at which such change is voted.

General municipal elections were held in Alabama on August 13, 1968. Therefore, it is obvious that under the provisions of Act No. 71, supra, any change from the commission to the mayor-council form of government voted at the election to which your request refers will take place on October 1, 1972.

It should here be pointed out that in the event the change in the form of the government of the City of Sheffield, here considered, is directed by the electorate, the election to select a mayor and members of the city council should be held in 1972, under the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582.

The provision for the appointment of a mayor and members of a municipal council by the governor found in Title 37, Section 126, Code of Alabama 1940, has been repealed by implication by Act No. 71, supra. See Quarterly Reports of Attorney General, Volume 111, page 78, and Volume 115, page 36.

We trust that the opinion expressed herein contains the desired information. If we may be of further service, please let us know.

Very truly yours,

MACDONALD GALLION
Attorney General

By /s/ Paul T. Gish, Jr.
PAUL T. GISH, JR.
Assistant Attorney General

PTGjr:dh

EXHIBIT 4

Dec. 22, 1975

Mr. Vincent McAlister
City Attorney
City of Sheffield
P. O. Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in reference to the submission of the proposed change to the mayor-council form of government which was submitted to the Attorney General by the City of Sheffield, Alabama, pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your letter of October 21, 1975, submitting certain information requested by the Department was received on October 23, 1975.

Based on our examination of the information provided by you concerning the submitted change, the data is insufficient to properly enable this Department to fulfill its responsibilities under Section 5. Our analysis of the information provided by you indicates that the proposed change may not be consistent with Alabama law or an advisory opinion of the Alabama Attorney General. If that is so, the change would appear to be unenforceable under state law and, as such, would not be subject to Section 5 review. We must therefore request clarification of this matter.

The question is whether Title 37 of the Code of Alabama as amended required the City of Sheffield, in abandoning its existing commission form of government in favor of the aldermanic form, to revert back to the aldermanic form of government exactly as it existed in 1912 or whether state law authorizes the city to adopt the aldermanic form of government as submitted. If the City of Sheffield is required to adopt all aspects of the pre-existing aldermanic form of government as set out in the city's informational brochure, the city would be divided into four wards and be governed by a mayor

and 8 aldermen, 2 aldermen being elected directly from each ward. Your particular attention is called to the language of the proposition submitted to the voters in the City of Sheffield on May 13, 1975, and mandated by Title 37, § 124 Code of Alabama (1940), the provision that ". . . the general municipal law as the same existed prior to and at the time of the adoption of the commission form of government . . ." governs if the qualified electors vote in favor of the proposition, Title 37, § 125 Code of Alabama (1940), and to page 3 of the opinion rendered to B. F. Walden by Alabama Assistant Attorney General Paul T. Gish, Jr. on August 19, 1968, after the enactment of Title 37, §§ 34(22), 34(54) and 426, Code of Alabama (1973 Cum.Supp.). We note that no information, as requested in Item 3 of our letter of May 23, 1975, to Mayor F. E. Draper, has been provided as to whether there were, in 1912, numbered post, residency, majority vote or staggered term requirements for the aldermanic seats and whether single shot voting was prohibited.

If, on the other hand, the City of Sheffield is not required to adopt the pre-existing aldermanic form of government and is authorized to follow other provisions of state law, it appears that the city could be divided into four wards in which 2 aldermen from each ward would be elected to the City Council on an at-large basis, and a president of the City Council would be elected at-large. Title 37, § 426, Code of Alabama (1973 Cum. Supp.). State law further provides for numbered post and majority vote requirements in such aldermanic elections. Title 37, §§ 34(22) and 34(54), Code of Alabama (1973 Cum. Supp.).

In view of the foregoing, we must request that you clarify whether the submitted change is an enforceable one consistent with Alabama law. In providing such a clarification, please indicate the legal authority for your position including copies of any intervening opinions which may have been rendered by the Alabama Attorney General with respect to this question.

On the basis of a telephone conversation between Mayor Draper and Departmental attorney Sheila K. De-

laney on December 19, 1975, it was learned that the Sheffield City Commission has formally adopted the ward boundaries proposed in the informational brochure submitted by the city. If, after further examination, you believe the submitted change is an enforceable one, please provide the following information to assist us in reviewing the ward aspect of the proposed form of government:

1. A street map or one more detailed than the map previously submitted which shows the ward boundaries.
2. The population distribution by race for each of the wards. According to information provided by you, census tract data was used in defining the ward boundaries. Please indicate the census tracts which apply to each of the four wards as well as any other data which were used in estimating the racial population.
3. The location of the polling places for each of the wards.

It would also be helpful to our analysis if you indicated whether there have been any black candidates for city or county offices since 1965, and if so, the office and the number of candidates involved, and the election returns, by precinct if possible.

As you know the Attorney General has a 60-day period to consider submissions pursuant to Section 5 of the Voting Rights Act of 1965. This period will begin to run upon receipt of the requested additional information.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

EXHIBIT 5

CITY OF SHEFFIELD
Sheffield, Alabama

May 3, 1976

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

In re: City of Sheffield, Alabama—Section 5 of Voting Rights Act of 1965

Reference is made to your letter of December 22, 1975, in regard to this matter. Pursuant to the request contained therein, please find enclosed the following:

1. A detailed street map of the city showing the ward boundaries.
2. A letter dated April 30, 1976, from the Northwest Alabama Council of Local Governments showing the population by race of each ward. The census tracts used in defining the ward boundaries were the tracts used by the United States District Court in establishing the boundary lines for state house and senate districts in the reapportionment of the Alabama State Legislature.
3. The polling places for each of the wards are noted on the enclosed map with a boxed X.

All statutes of the State of Alabama were recodified and recompiled in 1940 with the official designation of the current state law being the Code of Alabama of 1940. Therefore, whether the 1912 law is identical to the 1940 recodification we do not know but think that it is and that the form of government being adopted by the City of Sheffield is the same as that which existed in 1912. Certainly the city is bound by the state law as it exists

at the time of the election for the change in the form of government. It is our opinion that the 1912 law is the same as the present law as to number of aldermen, residency and majority vote. The general election laws of the State of Alabama have changed through the years to meet various state and federal requirements.

It is our opinion that the submitted change is an enforceable one and is consisent with Alabama law. In this connection we refer you to Title 37, § 426 of the Code of Alabama of 1940 as amended. You will note there that this section of the law was first adopted in 1909 and subsequently amended in 1927 (term of office changed from two years to four years), 1931 (first proviso added), 1956 (last two sentences added). Also please see Title 27, § 34 (22) and (54) of the Code of Alabama of 1940 as amended. This section of Title 37 was added in 1961 and is controlling for elections in cities not having a commission form of government.

If you have any further questions concerning this matter, please feel free to call.

Yours very truly,

ALMON, MCALISTER & ASHE

By /s/ Vincent McAlister
City Attorneys

VMc:avw
Enclosures

NORTHWEST ALABAMA COUNCIL
OF LOCAL GOVERNMENTS

April 30, 1976

Mayor F. E. Draper
City Hall
Sheffield, Alabama 35660

Dear Mayor Draper,

As per your request, the population breakdown by race for your wards is as follows:

	Total Population	Black		White
Ward 1	3,307	50		3,257
Ward 2	3,245	2,222	68.5%	1,023
Ward 3	3,188	254		2,934
Ward 4	3,375	-0-		3,375
Total	13,115	2,526		10,589

If you have any question, please contact me.

Sincerely,

/s/ Bill Howard
J. WILLIAM HOWARD
Senior Planner

cc: Mr. Jim Sparks

Enclosures:

JWH/js

EXHIBIT 6

Jul. 6, 1976

Mr. Vincent McAlister
Almon, McAlister & Ashe
Attorneys at Law
Post Office Drawer N
Sheffield, Alabama 35660

Dear Mr. McAlister:

This is in reference to the change in form of government for the City of Sheffield, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 5, 1976.

The Attorney General does not interpose any objection to the change to a mayor-council form of government. We feel a responsibility to point out, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See *White* v. *Regester*, 412 U.S. 755 (1973); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the proposed at-large method of electing city councilmen.

Please be advised that you may request the Attorney General to reconsider his objection on the basis of information not previously available that shows that the

new method of election does not have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. Sections 51.21(b), 51.24 and 51.25. In addition, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

cc: Public File
V8341

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

CA 76-M-1086-NW

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL,
DEFENDANTS.

September 3, 1976

BEFORE:

The Honorable Richard T. Rives, Fifth Circuit Court of Appeals.

The Honorable Frank H. McFadden, Northern District of Alabama.

The Honorable H. H. Grooms, Northern District of Alabama.

APPEARANCES:

Mr. Paul Hancock, Department of Justice, Washington, D. C.; Ms. Caryl P. Privett, Assistant United States Attorney, Birmingham, Alabama and Ms. Sheila K. Delaney, Department of Justice, Washington, D. C., for the Government.

Messrs. Vincent McAlister and Braxton W. Ashe, of the firm of Almon, McAlister and Ashe, Sheffield, Alabama, for the Defendants.

INDEX

WITNESSES:	*DIRECT*	*CROSS*	*REDIRECT*	*RECROSS*
F. E. Draper	17	40		
Sheila K. Delaney	46	50		

[3] PROCEEDINGS

THE COURT: Gentlemen, we call the case of the United States against the Board of Commissioners, Sheffield, Alabama and the answer of the defendants has just been filed. If there are any motions with respect to that answer, we will permit them to be filed within the course of the hearing or within the next day or so.

We would like to take the case on the merits for final decree. And the hearing will be on the case—on the merits and final judgment.

Are the parties ready?

MR. McALISTER: Yes, sir.

THE COURT: The plaintiff ready?

MR. HANCOCK: The plantiff is ready, Your Honor.

THE COURT: The defendants ready?

MR. McALISTER: Yes, sir.

THE COURT: Is there any evidence to be introduced?

MS. DELANEY: Your Honor, I am Sheila Delaney for the Voting Section of the Civil Rights Division of the United States.

The parties have reached some stipulations concerning the evidentiary matter before the Court but there are still some issues I think will require some testimony so the United States intends to present some limited testimony and such will not be too long.

[4] THE COURT: How about the defendants?

MR. McALISTER: Judge, we don't anticipate any testimony unless there are some questions come from the Court that have not been put into evidence or unless they raise something by their evidence that we think we should answer.

THE COURT: Any live witnesses to testify?

MS. DELANEY: At least one, Your Honor, yes, sir.

THE COURT: No requests for the Rule?

MR. McALISTER: No, sir.

THE COURT: All right.

It would be helpful to the Court if the parties would state their positions and introduce your stipulation so that the Court will understand the issues involved.

MS. DELANEY: Your Honor, we would like to

present a brief opening statement about the nature of the case.

THE COURT: If you will.

MS. DELANEY: Essentially, I think, Your Honor, this is a case to the Court on the Voting Rights Act, in particular Section V of the Voting Rights Act which I believe the Court understands applies to both Alabama and political subdivisions. And briefly, Section V requires that jurisdictions which are subject to the provisions of the Act which seek to administer or to enact a standard practical procedure which is different from that which was [5] in force and effect on November 1st, 1954 and seeks federal clearance in one of two ways. Jurisdiction may seek a declaratory judgment in the United States District Court for the District of Columbia and the change in question does not have an adverse racial purpose or effect or the jurisdiction involved may go before the Attorney General to seek a like determination.

The issue before the Court I believe is whether the City of Sheffield has enacted certain changes which are different from that which was in force and effect in the city on November 1st, 1954 and if so, whether those changes have been cleared in any one of the two prescribed methods.

I believe the evidence will show that the City of Sheffield maintained a commission form of government on November 1st, 1954. That subsequently, the city attempted to enact certain procedures which would effect a mayor-council form of government. That the city, pursuant to its obligations under Section V attempted to get preclearance from the Attorney General and the Attorney General objected to the at-large feature of electing the councilmen and that the city has failed to obtain any further declaratory judgment from the United States District Court in the District of Columbia and by virtue of that failure, it has not received federal pre-clearance and [6] therefore that change is unimportant.

THE COURT: Is there an issue as to whether or not the objection was filed within the 60 days?

MS. DELANEY: I believe the answer of the defendants filed this morning would suggest that that is an issue. The defendants, I don't believe, have any ground upon which to raise it.

THE COURT: The commissions were elected at-large before?

MS. DELANEY: Yes, sir.

THE COURT: So the council will be elected at-large in the present set-up?

MS. DELANEY: That's right.

THE COURT: But must reside within the district?

MS. DELANEY: The requirements—the Alabama Statute requires the councilmen reside in the particular ward they are to be elected from.

THE COURT: That applies to the commissioners also?

MS. DELANEY: I do not believe so, Your Honor. The only residency requirements are that they live within the City of Sheffield.

THE COURT: And now the residency requirements are that they live within the particular district?

MS. DELANEY: Yes, sir. I think I should say that by virtue of this particular set of facts that the United [7] States has no alternative but to seek a declaratory judgment since the changes in question have not received federal pre-clearance and since that is the case, the Court here is asked to join the implementation of those particular changes until some federal pre-clearance has been obtained.

I would like to wait for one other moment for one other issue, Your Honor, and that is that the jurisdiction of this Court, according to the Supreme Court cases, is very limited. The Court has an issue before it as to whether there is coverage under Section V and if so, whether federal pre-clearance has been obtained so it is really a coverage question and not a question of the merits of the case of whether or not the change has a racial purpose of effect. That particular determination is observed by statute to the Attorney General or to the United States District Court for the District of Columbia.

THE COURT: As I understand, you would question the jurisdiction of this Court—

MS. DELANEY: Well, I wouldn't question it but I would point out—

THE COURT: You would point out that this Court does not have jurisdiction even to decide whether the Attorney General decision was arbitrary?

MS. DELANEY: That's right, Your Honor.

THE COURT: They would have the right to review [8] that question in the D. C. Circuit.

MS. DELANEY: That's right.

THE COURT: And that is the only circuit in which they would have a right to review that?

MS. DELANEY: That is correct.

THE COURT: What is the function of this Court, to enjoin—

MS. DELANEY: I believe so, Your Honor. In other words, to determine whether the City of Sheffield has enacted changes which are within the purview of Section V and if so, whether the city has actually obtained pre-clearance through the Attorney General or through the United States District Court, District of Columbia and if not, then to enjoin the implementation of those changes until such time as the city has obtained pre-clearance or has obtained pre-clearance of any changes which are different from those which were in force and effect November 1, 1954.

THE COURT: Well, it is this time question that falls within our prerogative?

MS. DELANEY: Yes, I think it would, Your Honor. That is whether the Attorney Generaly has acted within the statutorily required period, I think is the question before the Court.

THE COURT: Not whether he acted arbitrarily?

MS. DELANEY: That's right, on the merits of the case.

[9] THE COURT: All right.

MR. McALISTER: May it please the Court, my name is Vincent McAlister and this is Braxton Ashe and we represent the City of Sheffield in this matter.

Let me say at the outset that I have got two involvements in this case, number one, I live in Sheffield, that is my home and number two, I am the lawyer for the city.

No lawyer was more amazed to find out that the Federal Government was interested in our city than I was. We are a town of 13,115 people. Approximately 19 percent of our city is black.

First off, I would like to say that I have substantial doubts as to whether the Voting Rights Act is even applicable to the City of Sheffield. The reason I say that is this, in our city and county, blacks have always registered to vote and have always voted. The Voting Rights Act did not register any blacks in Colbert County. Historically, the functioning of our registrars up there has been to register any black that came in there and wanted to register. So I say to you from a substantive standpoint, the Voting Rights Act, in my opinion is not applicable to the City of Sheffield. Now, the Act has broad language to the effect that it applies to any state or in any political subdivision of a state designated by the Attorney General. I can't find in any designation I [10] have seen where the City of Sheffield is designated. The State of Alabama is designated but I don't know that that necessarily carries with it the designation of all political subdivisions within the State of Alabama.

THE COURT: That is an issue we must decide?

MR. McALISTER: Yes, sir. The reason I saw that is because different areas of the state had different voting practices. As I say, in our area, blacks have always voted, they have always participated in the political process—

THE COURT: I think you should reserve that for closing argument.

MR. McALISTER: All right. That is a point that I would like to make.

The second point that I would like to make is if the Voting Right Act is applicable to the City of Sheffield, I would like to show to the Court and our defense would be that Section V on the Voting Rights Act did not apply to what occurred on Sheffield on this particular occassion for three reasons. Number one is that

since 1912, the City of Sheffield has had a commission form of government. That is a commission form of government of three commissioners. They are elected at-large throughout the City of Sheffield, requirements being that they reside in the city and they run for designated positions such as mayor, police and fire commissioner, street and sanitation commissioner.

[11] That was our form of government from 1912 until 1975 when it was determined by the City of Sheffield that they would like to change that form of government to a mayor-council or mayor-alderman form of government. Now, this change by the citizens of Sheffield was in accordance with the provisions of the general laws of the State of Alabama and the way that a citizen group goes about doing that is they circulate a petition and get signatures and they vote in the city to determine whether you want to change to the mayor-alderman from the commission form.

THE COURT: We on the Court have read very much of the record.

MR. McALISTER: All right. That occurred in this instance and in 1975 over a year ago, the citizens voted to change to the mayor-council form.

THE COURT: And the Attorney General didn't object to that?

MR. McALISTER: No, sir, only out of an abundance of precaution, not that we thought we were even subject to the Voting Rights Act but to keep everybody happy and to keep out of the trouble that we are in right now, we did notify the Attorney General that we were going to have this election and the Attorney General graciously wrote back and said, we don't have any objection to you having the election to change your form of government. Well, now, I [12] want to note right there that—

THE COURT: Just what did the Attorney General object to?

MR. McALISTER: Well, later on, a year later, the Attorney General objected to the at-large feature of our mayor-council form of government.

THE COURT: What was the difference between the at-large feature of the mayor-council and the one that—

MR. McALISTER: The only difference is under the commission form of government, you have got three commissioners. They run at-large. Under the mayor-council form, you have a mayor who runs at-large, you have a president of the council who runs at-large and we have eight aldermen or councilmen who also run at-large. They live in particular wards but must run at-large throughout the city.

THE COURT: Two from each ward?

MR. McALISTER: Two from each ward, yes, sir.

THE COURT: Isn't that all they objected to in this case?

MR. McALISTER: The at-large feature as I understand it, yes, sir.

THE COURT: Was that revealed in the commission to the Attorney General in March of 1975 when you placed before him the proposal to change the form of government?

MR. McALISTER: It was not revealed in the letter [13] of March, 1975 but Ms. Delaney is the Alabama specialist at the Department of Justice in the Civil Rights Division and she has handled this and is completely familiar with the Alabama election laws and has handled other elections in other cities the same size as Sheffield in the State of Alabama. So they were completely aware of what the Alabama law provided as far as who is elected at-large as far as mayor-council forms of government.

THE COURT: Let's limit the opening statement just to get down to the issues.

MR. McALISTER: Yes, sir, pardon me, sir.

One issue that I would like to point out and make clear to the Court is that once the City of Sheffield citizens voted in 1975 to change the form of government, that set in motion the machinery of the Alabama law requiring mayor-council elections in August of this year. In other words, when she voted to change, you set in motion the machinery for the change and nobody has any authority to stop that machinery. In other words, you become bound

to change and it is just a question of when your next general election is. So that is what occurred in our case. We voted for the change and then we started out this correspondence back and forth with the Department of Justice.

Now, in our answer and our contentions as to [14] Section V and its inapplicability here we first state—

THE COURT: Is that Section V quoted there, Mr. McAlister?

MR. McALISTER: I have it quoted in my memorandum, yes, sir. That is 1973(c).

THE COURT: What page of your memorandum?

MR. McALISTER: In substance, it is on Page 3 of my memorandum, at the bottom.

So our first contention is what we did in Sheffield did not come within the purview of 1973(c) or Section V of the Voting Rights Act.

Our second contention is that we were only implementing a law of Alabama which had been in force and effect in the State of Alabama since 1909, that established the different forms of governments for municipalities in the state and that we were only implementing a law that pre-existed the so-called Voting Rights Act of 1965. That is our second contention.

The third contention that we would make to the Court is that—and it might be put together into the—the third and fourth contentions might be placed together into one and that is, this is an equitable proceedings. The Department of Justice has come into this court seeking harsh, equitable remedy. That is, to interrupt a democratic election process in a political subdivision in this state [15] and we say that seeking equity they must meet the equitable maxims and the basic ones and they must come in here with clean hands themselves if they are going to seek equity and our contention is, they didn't come in with clean hands. We contend that they waited too late to come in to try to interrupt our election and that they knew in 1975 that we were going to this form of government and if they wanted to object, they should have objected then, but that they continued to drag us along and drag us along and to come in here the day before the

election and seek injunctive relief, we think it is too late and they are not entitled to it.

Now, our other contention along that same line is that we do think that this Court has jurisdiction to determine whether the action of the Department of Justice is arbitrary. We think this Court certainly has that jurisdiction. Otherwise, we would be subservient to the Department of Justice with no reins at all on it in this particular area. Now, all you can do in the Circuit Court in Washington, D. C. is seek a declaratory judgment. They make no determination about the arbitrariness of the action of the Department of Justice. We think in this case, they acted arbitrarily.

Our last contention is that after we had contined to make additional submissions to the Department of Justice pursuant to their request, that each time they would take the limit of time, they would take 59 days or 60 days and [16] on the last time, we say they waited too long, they took 62 days and we say that in waiting too long, past the 60th day, they are precluded from coming into this court at this time and getting injunctive relief under Section V.

Those are our basic contentions.

THE COURT: All right, we call on the plaintiff to introduce its evidence.

MS. DELANEY: Your Honor, at this time, I would like to present the Court with the original stipulation from the documents in support of those stipulations and also copies for the individual members of this Court.

I would like to add that there is a map attached to Exhibit No. 5 which appears only in the original exhibit and is not attached to the copies presented to the Court since we don't have any other copies.

THE COURT: That is this big map?

MS. DELANEY: Yes, sir, Your Honor, the map of the ward boundaries adopted by the City of Sheffield to execute the mayor-council form of government.

I would just characterize that evidence as essentially admissions by the parties as to the nature of the duties of the present members of the commission form of government and the attachment of the correspondence between

the Department of Justice and the officials of—or the representatives of the City of Sheffield which constitute the correspondence [17] between the parties as to the position and requesting additional information.

At this time, I think I would like to call Mayor Draper to the stand.

Before I call the mayor, I would like to offer the stipulation into evidence.

THE COURT: You offer the stipulation?

MS. DELANEY: That's right.

THE COURT: The stipulation will be received in evidence.

MR. McALISTER: Yes, sir.

F. E. DRAPER,

called as a witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MS. DELANEY:) Good morning, mayor.

A Good morning.

Q Would you identify to the Court the capacity in which you serve as an official of the City of Sheffield?

A Yes, I serve as president of the commission of the City of Sheffield, having been elected and took office in October, 1972. This is the office which carries with it the title of mayor of the city.

Q Would you describe to the Court briefly, the [18] composition of the commission form of government, how many members it has and the manner in which the commission is elected?

A Yes, the commissioners are three in number, a president of the commission and a public safety commissioner who has under his control, fire and police departments and the street and sanitation commissioner.

They run for office each year and serve for three year terms. One commissioner coming up for election each succeeding year.

They are required to be residents of the city and they can live anywhere within the corporate limits and they are elected at-large.

Q How many votes does it take to pass an issue before the commission?

A Depending upon the type. Some issues by state statute require a unanimous vote but very few. The general run is a two-thirds majority.

Q Can you tell the Court now whether the City of Sheffield seeks to administer a form of government which is different from that which is presently in existence in the City of Sheffield?

A Yes, in May, 1975, by a vote of the people which resulted from a petition to change the form of government, by a vote of some 700 to 300 more or less, the electors of [19] our city voted in favor of changing the form of government from a commission type of government to a mayor-council or alderman type of government which required us to follow through with that procedure.

Q Could you describe briefly, much in the same way you described about the composition of the commission, what the composition of the mayor-council form is and how the members of the council and the mayor are elected?

A Yes, if I might say, Ms. Delaney, I sent to you this booklet which I wrote, which I think in detail covers all the aspects of our new form of government and this was written and given to our people, to all of our people through the school system so they would know what we were getting involved in at election time. We did this in July of 1975 and essentially what we told them in this booklet is that we will have a mayor who will serve full-time. In order to allow the mayor to serve full-time, it will be necessary that we comply with state statute, limitations for a mayor's salary and if we want him to serve full-time, it would be necessary that we pave the way for him to serve also in a capacity with our utility department. The state law says that if a mayor in the State of Alabama is also assigned colateral or additional duties with its utility department, he may then be required to serve full-time. We have effected all of those

changes and required ordinances within the [20] time limit specified by the law. So we will have a full-time mayor with a salary of $15,000.

We said that the mayor must be a resident of the city and I believe that he must be a resident—at that time and it may have been changed since but 90 days prior to the election. We said that he would be elected at-large and that he would be the chief executive officer of the city.

Relating to the council, we said that we would elect a president of the council, whose salary would be $200 monthly. A council would be required to meet twice monthly rather than once a week as the commission does now.

That the terms of office of all candidates would be four years. We said that the salaries of the president of the council—

Q Excuse me, may I interrupt just a second.

Does that mean that all the members of the mayor-council government would be elected at the same time?

A Yes, ma'am, for a four year term.

That the president of the council would receive a salary of $200 a month, $2,400 annually.

That he must have resided also in the city for the required length of time prior to announcing his candidacy. That he could come from anywhere within the corporate limits of the city and that he, like the mayor, would be elected [21] at-large.

As far as the eight other councilmen were concerned, we had the council of local government which we considered non-political in every sense to outline our new ward lines and, incidentally, they did that twice. Due to a suggestion I believe from you or from someone in your office that maybe we ought to try to follow some of the lines that had been established for the State Legislature, where we wouldn't have some variance. I may be wrong, it may not have come from your office but someone made a strong suggestion that we make those lines correspond to those lines that were set up by the Legislature for the Legislature itself so that the public would not be confused at election time.

Then after that was redone—was done by the Muscle Shoals council government in accordance with instructions of the laws that we saw which required that the lines be drawn up in equal population situations as nearly as possible and we drew up four wards with something over 3,000 persons in each ward.

And I would like to say here at this time that we gave most complete thought to the section of town which we call Southeast Sheffield, which is predominantly black and we did not split it up where half would be in one ward and half would be in another ward but put them all in the same ward but in order to [illegible] our population equally balanced, [22] it was necessary that we put some other few whites in adjoining sections of town into that ward to make our requirements on equal population work out.

We said that there would be two—

Q May I interrupt again?

Do you recall exactly when the city finally adopted the ward plan that you have spoken of?

A Well, I know we were most careful that we do it within the required time limit which was I believe, six months. Our city attorney was at the meeting where we did it and I believe we would have done that probably eight months before the election which would have set us back into December of 1975. This would be approximately—it would be a matter of record in the minutes of our commission meeting and I am not definitely sure.

Q Would the commission have passed some ordinance effectuating that?

A Yes, we did.

Q All right, continue.

A We stated that we would have two councilmen run from each ward with the requirement that they would live within the boundary lines as established by that ward. That the offices, place 1 and place 2, were just for setting forth that there would be two different people serve that ward and had no political or rank bearing at all. It [23]was just to distinguish between the two different councilmen that would be serving in any particular ward.

We stated that in accordance with Title 37, and I believe—I am not that well versed on Section 426 or something of that nature, but Title 37 of the State of Alabama laws state that if a city has seven or less wards and has a population which does not exceed 19,999, that it would be required that the council persons be elected at-large. And we followed that section of the state statute in setting this up.

I might add, that all along the way, Ms. Delaney, we —and I discussed on the telephone with you a number of times, all facets of this thing and sent you this booklet way back.

We got this booklet out to our people and we had no objections from the blacks up until the time the election came around and there was some evidence then that maybe the at-large thing would preclude some of them from being elected which seemed to bring this thing to a head in the final stages just before the election. But I think in all fairness, there was no objection from any citizens that I can recall, to me personally about the fact that these elections were at-large and we did not and I am just trying to say that we were above board in everything we did and we felt that we were doing what our people wanted us to do, including our blacks. We [24] set it up that way because the state statute says to do it that way and we published it and made it a matter of record and we sent you a lot of clippings about the information of the election that our newspapers carried prior to the election and while we were having petitions going and I think everybody was thoroughly informed. Of course, I am sure you don't want my comments but I have got to say what I believe and how I feel.

Q I would like to ask you, Mr. Draper, whether you recall whether there was a question which arose during the Department of Justice review of the changes in question as to precisely what Alabama law required in terms of the council?

A I recall a conversation with you on the telephone to that effect and I also—and I hope you have this recorded, if the Federal Government is still recording conversations, I hope you did have it recorded because

you will recall I said, for goodness sakes, whatever attitude you take about it, let us know because we are getting involved in this thing and we have just got to go on and continue the way we got it set and I believe you indicated that you would probably—sometime within your requirements, but I was getting ready to say that I feel to some extent, because I wrote this booklet and I pushed for a change in the form of government which is needed badly in our city, I feel that [25] the Federal Government is testing my character in this thing and I resent it, I really do.

Q Mayor Draper, I will ask you to direct your attention to Exhibit 3 that is attached to the stipulation we have offered in evidence and direct your particular attention to the pamphlet that you have been referring to?

A Yes.

Q In the first instance, I would like you to direct your attention to paragraph two of the preface and describe, if you will, in your own words, or the words of the preface, the description of the council, mayor-council or mayor-alderman form of government that existed in the city in 1912?

A Yes.

Q In that instance, how were the councilmen elected? Were they elected by persons of the entire city or elected directly by the ward?

A They were elected directly by the ward but at that time, Section 37 of the State Statute for Alabama did not go against that. Subsequent to 1912, state statute put in the requirement, that they be elected at-large.

Q Now, may I direct your attention to the declaration of results of the special election which is certified by the city clerk which is several pages beyond what you just referred to?

[26] A In this?

Q Yes, it is entitled at the top, "Declaration of Results of Special Election."

Would you read to the Court or describe in your own words, precisely what the proposition was before the voters when they voted in the referendum in May, 1975?

A "Special election was held in the City of Sheffield, Alabama, the question being, whether the proposition to abandon the commission form of government in said city and return to the aldermanic form of government in said city as it existed in the said city at the time of the commission form of government was adopted should be adopted.

"And whereas, said question was submitted to the qualified electors of the City of Sheffield," etcetera.

Q That is fine.

Now, would you refer you attention to Page 3 of the letter from the State Attorney General's Office to the then Mayor of the City of Sheffield, B. F. Walden, in which the question of the manner of election of the city councilmen was at issue and describe briefly what the Attorney General's opinion said with respect to how the voters of the City of Sheffield should elect the councilmen, if they abandoned the commission form of government?

That would be Page 3 of the letter from Mr. Gish to Mr. Walden on behalf of the Attorney General?

[27] A Letter dated August 19, on Page 3 and what was it now?

Q The second and third paragraph, I believe talks about the manner in which the City of Sheffield would be required to elect city councilmen if it abandoned the commission form of government and returned to the mayor-council form as it existed in 1912. Could you prescribe what the advisory opinion is with respect to how a councilman might be elected or should be elected?

THE COURT: Doesn't that letter speak for itself?

MS. DELANEY: I believe it does, Your Honor, but I wanted to indicate the questions that the Department of Justice had about the confusion that existed between what the pamphlet said and what the other documentary evidence said.

A What do you want me to do?

Q Well, just indicate what the Attorney General's opinion is?

A Well, I think it apparently says that we would change—would be governed by a mayor and eight aldermen, two aldermen being elected from each of the four

wards. Well, we had it nine and we had the question of the other commissioner which—I don't know why we had nine actually.

Can I ask my attorney why?

Q Perhaps, not at this time.

[28] A Okay. Then we divided the city into wards prior to the three months before the election and—

Q Mayor Draper, do you recall the letter or are you familiar with the letter—

MR. McALISTER: Excuse me, let me interrupt. Please let him finish his answer.

A I am trying to get the thinking here that this letter was to Commissioner Walden and I had seen it at the time we were working it up, you know, with our attorney and what have you, the new form of government and things that needed to be done.

Q Mayor, may I ask you, do you think the position which the city ultimately took with respect to adopting a plan for electing the councilmen was consistent with what the Attorney General's opinion said and what was also said in the proclamation with respect to the type of government the voters would go back to if they—

A Yes, ma'am, I think one is because we complied with state law which—whether or not it was in effect in 1912, it is in effect now and we were trying our best to do what current law was requiring us to do and it didn't make any sense to go back, for instance, and elect eight aldermen when you had to have—all governing bodies had to have an unequal number of people in today's world to make decisions in the nature of governing.

[29] I don't think any of us felt that every comma and period and crossing of T's back from things that were in 1912 had to be done specifically that way, particularly in view of the fact that current law in the State of Alabama stated otherwise. I mean when you do these things, don't you try to bring them up-to-date?

Q Well, the language of the statute and the referendum, did it not clearly state that the city was reverting—

A Yes, ma'am, it may have said that but I am trying o—

MR. McALISTER: Let me interrupt here and make this objection. If the Department of Justice is attacking the Alabama law, I would like to have that as their statement of position here because it is my understanding there is no contest but that we followed the Alabama law to the letter in everything that we did.

Now, if you are quarreling with what the Alabama law provides, I think that should be in one of your positions.

THE COURT: You are objecting to this evidence?

MR. McALISTER: My objection is that this is irrelevant and immaterial to any issue raised by the Department of Justice heretofore.

MS. DELANEY: That line of questioning for the purposes of that question was raised because Mayor Draper in his earlier testimony indicated the Department of Justice [30] as early as March, 1975 was perfectly familiar with the procedure and the method by which the councilman form of government would be elected. I think the line of questioning we have developed indicates that we were clearly not certain as to the method by which the city was required under Alabama law to elect councilmen and I believe it was a legitimate inquiry in view of the apparent inconsistency between what the State Attorney General's opinion says and the literal language of the referendum that went before the voters and even language in the pamphlet developed by the city as a means of educating the voter about the change and we simply wanted to clarify and wanted to have an understanding of the legal basis on which the city was acting in the change to make sure it was in compliance with Alabama law.

THE COURT: The point being, you take the position that the Attorney General of the State indicated election by district as opposed to at-large? Is this the crucial point?

MS. DELANEY: Well, it indicates that there was an inconsistency between the position of the State Attorney General and what the city was pursuing and it was submitted by the city on behalf of its position that the

changes should be under the general law of the state with the proper procedure—

[31] MR. McALISTER: I have difficulty in understanding the position of the Department of Justice, is it to seek compliance with the Voting Rights Act or is to determine whether or not a city is properly applying state law. I think that is—those are two different questions. I don't think it is the prerogative of the Justice Department to come in and say whether or not a city is properly applying a state law or what the interpretation of the state law is. Their limited purview, according to my understanding of what they said in their opening argument, was that we didn't comply with Section V of the Voting Rights Act. Now, the Alabama Statute and laws are for judicial knowledge and they are there.

MS. DELANEY: However, under federal law, this Department of Justice is not permitted to review changes unless they are legally unenforceable under state law so that there is a question about whether the change was legally enforceable under state law, then I think the Attorney General had to determine whether he had review power to begin with.

THE COURT: The Court thinks that the evidence should go on in and that you should then argue the issues.

MR. McALISTER: All right.

MS. DELANEY: Your Honor, I am simply trying to indicate, and I hope I have indicated today that the [32] commission as it came to the Department of Justice, was simply confused. We didn't know whether the city was following or under what legal procedure or what legal authority the city was acting and we tried to clarify—

THE COURT: I think we understand but that is a matter to be argued.

Q Mayor Draper, I would like to pursue another line of inquiry at this point.

Can you advise the Court whether the city has sought a declaratory judgment in the United States District Court, District of Columbia, that the changes in question—

A Not to my knowledge, we have not. When your letter was received after our deadline date for candidacy, indicating we had the right to do so, we were not contending anything with you and we thought you were saying if you take exception to what we are saying then you ought to go on and do this but you did not direct us to.

Q But to your knowledge, the city has not sought a declaratory judgment?

A Not to my knowledge.

Q Mayor Draper, can you now tell the Court or describe to the Court the manner in which the August 10, 1976 municipal elections were conducted for each of the offices involved, the mayor, the president of the Council and the councilmen, how were candidates required to run at that time?

[33] A Just as we stated in the pamphlet which is a matter of record, I guess. There were no changes whatsoever from the way we had set it up and advertised it to be to the public and no difference in the manner that I discussed with you on numerous occasions and you said your department didn't know what we were doing and I discussed it with you and you know I have, that we were going to do it at-large.

Q Would it be correct then to state that the councilmen election was conducted on the at-large basis?

A Yes.

Q Mayor Draper, I would like to call your attention again to the exhibit before you, attached to the stipulation and ask you to direct your attention to the letter of May 23rd from Mr. Pottinger to yourself. I believe the letter refers to the Attorney General's decision not to interpose an objection to the referendum?

A What date was that?

Q I believe it was May 23rd, 1975. That would be Exhibit No. 2 attached to the stipulation?

A Yes, I have that.

Q Could you tell the Court whether the Attorney General advised the city that the changes in the form of government was a change within the purview of Section V?

A The Attorney General does not interpose objection to holding the referendum. We feel it is our responsibility [34] to point out Section V of the Voting Rights Act, the failure of the Attorney General to object does not bar subsequent judicial action to enjoin the enforcement of same.

Q What about the—not the act but the referendum itself, the change from the mayor to the mayor-commission form of government?

A Well, do you know what paragraph that is?

Q Paragraph three.

A Yes, ma'am, you say that it is subject to preclearance requirements of Section V.

Q Can you tell us on what date the city then responded to that notification it was subject to Section V pre-clearance being submitted, information regarding that change?

A I don't have that. My Attorney has our file.

Q All right, examine Exhibit No. 3. It would be a letter from Mr. McAlister to Mr. Pottinger?

A What do you want me to do, just read the date of the letter?

Q Yes.

A October 21, 1975.

Q Can you estimate approximately how many months it took for the City of Sheffield to respond to the Department of Justice?

A Well, I thought our conversations we were having [35] on the telephone during that period of time were progressing rather well and we were keeping you informed.

Q I would refer you back to the letter of May 23rd and request that you indicate whether the Attorney General--whether Mr. Pottinger on behalf of the Attorney General, requested the city submit information on behalf of any submission, to submit it to the Department of Justice. Did Mr. Pottinger ask for certain information in support of the position?

A If you have any question, do not hesitate to call Ms. Delaney, which I did.

Q What about the items starting on Page 2, items one through five?

A Yes.

Q Were they requests for information about the kind of changes that would be made?

A Well, I don't have at this point—well, we discussed this in our commission meetings and we received this and we turned it over to our city attorney and I just don't know now at what point he did whatever requirements, you know, were there or not.

Q How many months would you estimate occurred between the time of the Attorney General advising the city of its obligations under Section V with respect to changing the form of government and the time that the city responded with [36] the information?

A I would say upon receipt of this letter, I called you and that we had some lengthy discussions about it on the telephone, Ms. Delaney. And I kept you apprised that we were getting this and that and you said be sure to send us all of the newspaper clippings and a lot of other things that were required by this thing.

Q Those particular pieces of documents that are in evidence?

A Yes, and at that time I told you I was going to write the booklet and give it to you and we did. I sent you a copy of that without even a letter and I think our attorney sent one as part of our submission.

Q Did your attorney send that information to the Department of Justice on October 21st, 1975?

A According to this letter, he did but I think I sent you a copy of the booklet long before that time, if I might say so.

Q I will refer your attention to Exhibit 4 which requests information again from the city and ask you the date of that letter?

A Exhibit 4? December 22.

Q Describe briefly to the Court what that letter reflects?

A This letter was not addressed to me but to [37] Mr. Vincent McAlister, our city attorney.

Q Are you reasonably familiar with that letter enough to comment on it?

A To the extent that the city attorney called me and told me that he had received the letter and that in his estimation, it did not preclude us from holding the election. It merely states that your department might have an objection to it and if we didn't concur with what you said that we should file something in district court in Washington.

Q Did the letter of December 22nd, 1975 ask for clarification of the matters as to how the city councilmen would be elected under the plans?

A Well, I will have to read it to find out because I have not seen this particular letter. It was, as I said, addressed to our attorney and was in his files.

You want to know if it says—

Q If it requests clarification of certain information with respect to how the city councilmen are going to be elected under Alabama law and what the—

A Well, you state that there is a question whether Title 37 is abandoning the existing commission government but nowhere in here it tells us we have got to stop our election or that we can't proceed or that you are not going to—you know, what you are going to do or not going to do.

Q That's right. Was there also a request for [38] information about the action the Board of Commissioners took with respect to establishing the wards in December, 1975?

A You referred to a letter which was to the other mayor, Mayor Walden and we note that no information is requested in item three of our letter of May 23rd to Mayor Draper, has been provided us to whether in 1912 there were numbered votes rather than the majority vote —I will say this, I believe Mr. McAlister had at his disposal that information and I was not—at this point in time, December 22, 1975, I had informed my commission that I would become a candidate for mayor and that I felt being such, that I should divorce myself from all matters and did so.

Q Would you refer to Page 3 of the letter and indicate whether the Department asked the city to present certain information about the ward boundaries that were finally established in December, 1975?

A The street map shows the ward boundaries, population of the areas by race, according to the information from the census and so forth.

Q Mayor Draper, would you refer to the city's response to that letter which would be Exhibit 5 and indicate the date of that letter?

A May 3, 1976.

Q Can you estimate the length of time it took the city to respond to that request for information? How long [39] it took?

A December 22nd, to May, 1976. This is in writing. It didn't take that long. You had copies of the booklet which showed those ward lines, streets and everything in that booklet that we sent to you. I hope somebody read it.

Q The booklet was dated what date?

A July 4, 1975.

Q And what was the date the city finally adopted—officially adopted the change?

A I would have to look at the record to see.

Q Did you indicate earlier today that the city probably acted in December, 1975?

A Probably. I know at the time we did it, we were trying to be sure that we came in the time limit requirements which said that it had to be done in a certain amount of time before the election and I know we met those requirements.

Q Are you familiar, Mayor Draper, with the guidelines promulgated by the Attorney General for review of Section V submissions?

A You sent me a pamphlet, I believe, which had some of those which I immediately gave to our attorney to use as he saw fit in making his report.

Q Are you familiar with the fact that those guidelines permit jurisdiction which is covered by Section V to request consideration—

[40] A I might not have done it in writing but I sure talked with you enough on the telephone and showed you my concern that if you had any objection to let us know in plenty of time.

Q In that event, what would account for the delay between the time that the city—

A The assumption that the pamphlet we sent you was sufficient.

Q How did you interpret then the request the Department made to the city?

A Nowhere along the line, Ms. Delaney, did you come to us and say, look, you can't hold this election. You do this. You didn't direct us to do this or direct us to do that and we were presuming that the conversations we were having verbally on the telephone and whatever we were doing otherwise in writing and the actions we were taking in our commission were sufficient.

MS. DELANEY: Thank you, I think that concludes the testimony.

CROSS EXAMINATION

Q (BY MR. McALISTER:) Mayor Draper, you have stated in your testimony that you had more than one conversation with Ms. Delaney here?

A Yes, sir.

Q Do you recall or can you give us an estimate as [41] when the first conversation was that you had with her, the approximate time?

A It was sometime before the—sometime after the petition was turned into us by the people. Sometime after that meeting, I don't know just exactly when.

Q It would be your best estimate sometime in the summer of 1975?

A I would say yes.

Q At that particular time, was Ms. Delaney aware or did you advise her that the councilmen would be elected at-large within the city?

A I don't know that I did at that time, however, I sent her some of the questions and answers that we had made a part of the petition when we circulated the peti-

tions to see if the people were interested or not which contained that information.

Q Mayor Draper, in all of the procedures followed by the City of Sheffield, in both conducting the referendum to determine whether or not there would be a change from the commission to the mayor-council form, as well as the date of the election in 1976, August 10, the qualification of the candidates, the fact they ran at-large, the fact that they were numbered positions, to your knowledge, were all of these requirements of the laws of the State of Alabama?

A To the best of my knowledge.

[42] Q And to your knowledge, did the city endeavor to comply to the best of its knowledge with what the requirements of the Alabama law were?

A Yes, sir.

Q And wasn't the question on the ballot when making the switch from the commission to the mayor-council form of government, wasn't that the question set out in the Alabama Code that must be on the ballot?

A Yes, sir, according to you. I didn't follow it but that is what you said.

Q Mr. Draper, to your knowledge, during the years that you have been familiar with the City of Sheffield and your study of the history of the city, to your knowledge, has there ever been a black candidate for any commission office in the city?

A Not until now.

Q In the most recent elections which were the ones implementing the mayor-council form of government, were there black candidates offered?

A Yes.

Q How many?

A I believe there were four.

Q Have any of those been elected at this time?

A No, on the at-large basis, one got quite a number of votes and was defeated by about 200 and another is in the [43] run-off.

Q You have one black candidate in the run-off?

A Yes, sir.

Q One of the councilmen?

A Yes, sir.

Q And when is that run-off scheduled?

A September the 14th.

MS. DELANEY: May it please the Court, I object to that line of questioning on the ground it is irrelevant to the issues before the Court as to whether or not there is coverage and whether or not—

THE COURT: Objection overruled. We will give you so much latitude and we will let the evidence come in and the Court may disregard it.

MR. McALISTER: I believe that's all.

MS. DELANEY: That's all.

THE COURT: You may come down.

(Witness excused)

THE COURT: Any further evidence?

MS. DELANEY: At this time, I would like to present to the Court an affidavit signed by Mr. Jones of the Department of Justice which indicates basically the number of submissions under Section V which have been reviewed by the Voting Section from the year 1965 up to the present time as an indication of the workload that is before the Department [44] under Section V.

MR. McALISTER: We will object to that, Your Honor. I would like to make a submission of my workload.

THE COURT: Is this a justification for the failure to respond?

MS. DELANEY: That is correct, Your Honor. There is an allegation that the Department has been untimely in its response to the information that was submitted to the Department and I offer that simply as an indication of the—

THE COURT: I remember a case in the city of Houston—Dothan, Alabama, in which the Supreme Court of Alabama passed on that matter and held that the workload of the Department, the Attorney General's Department was not adequate to set aside the time element.

Is that what you are trying to do, set aside the time element?

MS. DELANEY: Oh, no, not at all. As far as the Department is concerned, the Attorney General acted in a timely fashion in the period that was required in the guidelines. But it does indicate that there is, particularly in the last two years, a heavy workload and that may explain the actions of the Attorney General in terms of later response.

MR. McALISTER: Judge, I don't know whether they multiply the lawyers like they multiply the workload or not.

[45] THE COURT: Well, whether this is relevant or not is very questionable but if it is relevant, the witness could be cross examined about it.

MS. DELANEY: Well, Your Honor, I think it may fall under the Hearsay Exception of the document that you prepare in the regular course of business and as the affidavit indicates, the Voting Section does keep the number of submissions on review and I would think it would fall under the exception to the Hearsay Rule.

THE COURT: This is not an official record of the Department. It is an affidavit for this particular case and the Court would hold it isn't relevant.

MS. DELANEY: Thank you.

Your Honor, I don't believe the Government has anymore evidence.

THE COURT: How much time do you gentlemen and ladies wish for argument?

MR. McALISTER: Judge, I would like to call Ms. Delaney to the stand for a few questions, if I could.

THE COURT: All right, you may make objections to the attorney's questions while you are testifying.

MR. HANCOCK: If Your Honor please, my name is Paul Hancock and I am also a lawyer with the Department and on the lawyer's behalf, I would like to enter an objection to her testifying. She is counsel of record in this [46] proceedings and the attorneys for the defendants have offered no basis for her testimony. It is an unusual procedure calling counsel of record.

THE COURT: In the conversations with the mayor and the examination of the mayor, it has been disclosed

a good many conversations occurred between Ms. Delaney and the mayor.

MR. HANCOCK: I would have no objection to her testimony being limited to those conversations and her review of the subject.

THE COURT: Any particular thing that you object to that comes up, but as far as her testifying as a witness, your objection is overruled.

SHEILA K. DELANEY,

called as a witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. McALISTER:) Would you state your name, please?

A My name is Sheila Delaney.

Q Where are you employed?

A By the Voting Section of the Department of Justice.

Q Are you a practicing attorney?

A That is correct.

[47] Q Licensed in the District of Columbia?

A Licensed in the State of Virginia.

Q Do you have any sub-specialty within the Civil Rights Division of the Department of Justice?

A I work in the Voting Section and help enforce the Voting Rights Act and my specialty is voting legislation.

Q Any particular state?

A I am assigned to work in the State of Alabama or I am primarily responsible for the State of Alabama, California, the State of New York and some other states.

Q In that particular assignment, you, of course, are familiar with the laws of the State of Alabama?

A That is correct, at least some of them.

Q And you have an Alabama code?

A Yes, sir, that is correct.

Q And you read that code from time to time?

A That is correct.

Q So that you do get the submissions that come to the Department of Justice from cities in the State of Alabama relevant to the Voting Rights Act of 1965?

A I used to, I do not anymore.

Q But you did get the City of Sheffield submission?

A That is correct, initially, I did.

Q And you had received other submissions prior to that from other cities in the State of Alabama?

[48] A That is correct.

Q You were familiar when you received the first notification from the State of—the City of Sheffield as to the form of government relative to commission to the mayor-council form?

A I don't think that is correct. As I recall, the letter that we received from Mayor Draper indicated the city would have a referendum to determine whether to abandon the commission form of government and go to the mayor-council form and as I recall the mayor in his letter indicated the legal authority under which the City of Sheffield would act in pursuing this referendum and referred to Chapter 3, Article IV or the code which talked about the procedures which the city went through in having the referendum to determine whether there would be a change in the form of government or abandonment of the existing form but I don't think it is correct to say that I knew at that time or the Department knew at that time what the city—the kind of government the city would have in a particular sense at that particular point.

Q But you had other submissions from other cities changing from commission to mayor-council form of government from Alabama, hadn't you?

A I am not sure I did.

Q You had Talladega?

[49] A Talladega was—I believe and I am afraid I don't have the record here to substantiate this but as I recall, I believe you are right in that Talladega did change from a commission form to a mayor-council form but I believe it did that before I came with the Department of Justice. I did review other changes by the City of Talladega with reference to the councilman election.

Q Did you have Dothan?

A No, sir.

Q Fairfield?

A Yes, sir, I had—as far as Fairfield was concerned, I don't recall whether a change was from a commission to a mayor-council but they did have some change in—I think the change I reviewed in Fairfield was an annexation.

Q But you did have access to the [illegible]na Code?

A Absolutely.

Q And you are familiar with Title 37 of that code as it applies to municipalities?

A I am familiar with portions of it, yes.

Q All of the letters that have come over the signature of Mr. Pottinger to the state, to the City of Sheffield, those letters were drafted by you?

A That is not correct. Some of those letters were suggested and were signed over his signature but not all [50] of them.

Q Did you have to approve those letters?

A I essentially drafted the basic replies, I think, but not all of the letters.

MR. McALISTER: I believe that's all.

CROSS EXAMINATION

Q (BY MR. HANCOCK:) Ms. Delaney, when you received the original submission by the City of Sheffield, dated March 20, 1975 and attached to the stipulation as Exhibit 1, in that submission or any other time thereafter, did the city request expedited consideration of the proposal of conducting the referendum?

A It certainly did not request it in writing. Mayor Draper indicated he may have requested it by—in a verbal sense if I recall his testimony correctly. I don't recall whether it is true or not but the proper procedure for requesting expedited procedure is to request it in letter form.

Q And do I understand the testimony to be that you sent him a pamphlet that contained the regulations that set out the procedure to be followed?

A I believe that is what he said.

Q Is that correct?

A I don't know for a fact but it is common procedure for the Department to send jurisdictions copies of the [51] guidelines. I probably—if I did, I put it in an envelope with a note and didn't send the letter or anything like that.

Q And during the time limit that is allowed by the Voting Rights Act and by the regulations that have been adopted pursuant to the Act, is it correct that the Attorney General—Mr. Pottinger, on behalf of the Attorney General sent a letter to the city stating that the Attorney General would not object to the holding of the referendum election?

A That is correct.

Q And in that letter, I believe, you—which is attached as an Exhibit No. 2, certain information was requested from the City of Sheffield and did you help prepare that request for information?

A That is correct.

Q And according to the record before the Court, it took the city five months to submit that information to the Attorney General. At any time during that five months, did any city official communicate with you the need for expedited consideration or reasons for the delay in submitting the proposal to the Attorney General?

A As I said, I don't recall whether Mayor Draper actually asked for an expedited consideration of the guidelines. He did make it clear the city was interested in this new form of government and it was very clearly interested in proceeding along getting clearance but whether or not the [52] mayor actually asked for expedited consideration, I don't recall that.

Q But it did take five months to submit the proposal?

A Yes, sir.

Q Did they at any time indicate to you that they were considering electing going before the three judge district court in Washington?

A Not that I recall.

Q When the submission was sent to the Attorney General, which is attached to Exhibit 3—do you have a copy of the stipulation?

A No, sir.

MR. HANCOCK: May I have it, Mr. Clerk?

Exhibit 3, is it a correct statement that is the Section V submission presented by the City of Sheffield?

A In response to our letter of May 23, yes.

Q And within the 60 days allowed by the guidelines, did Mr. Pottinger request additional information?

A Yes, he did.

Q Would you explain to the Court the reasons that additional information was requested from the city? I don't mean for you to state necessarily to the letter but the problems you had, if any, in reviewing the submission and why you needed additional information before you could determine whether the proposed change would have the effect [53] prescribed by the Voting Rights Act?

A Well, I think the answer to that is two-pronged. I think there has been earlier testimony which indicated that the submission by the city was confusing as to the basis upon which the city was acting insofar as the election of the councilmen was concerned and whether the councilmen should be elected on a district basis according to the state law and Alabama Statute or whether it was permissible under Alabama law for the City of Sheffield to conduct elections under the general law of the state as provided in Title 37, Section 426 and that has been set out in some detail in our letter asking for additional information.

The other reason for our request was that the city in December, 1975, had finally acted to adopt the ward boundaries and we asked for information about the racial composition of the wards which was part of the overall plan for the mayor-council form of government. And that was not done until December and that change was not final until we asked as we typically do, on submissions of this kind, for information along those lines.

Q And is it correct to state that you were then confused at the time of the original submission as to whether the councilmen would be elected at-large or by district?

A I don't think in the original submission, if you characterize the original submission as the referendum.

[54] Q I was referring to the original—I wasn't referring to the submission of the referendum but rather the submission of the actual change?

A That is correct.

Q In enforcing Section V, would you explain the policy of the Office of the Attorney General as regards the finality of the enactment?

A Well, the Department has taken the position, I believe, as set forth in the regulations here, the Code of Federal Regulations, that the Department will not review any changes until those changes are final and capable of administration under the law. In other words, we wouldn't review an annexation that was under advisement, for example, by the City Council. We would wait until the City Council had taken final action and annexed property or whatever. We would wait until the jurisdiction has taken final action and was capable of administering that particular change under state law.

Q So if the city would submit a proposed change which said to the effect that they wish to have a referendum election to determine whether the form of government would be changed, would you consider that a submission of a referendum or the submission of a change in the form of government?

A Change in the referendum or change—I mean the [55] referendum would be the change. Not the change of government.

Q And then you would—the actual change would have to be later submitted?

A That is correct.

Q And people vote to adopt it?

A Yes.

Q After the letter was sent, which requested more information to clear up the questions that you had that

you just testified to regarding the change, that was sent in December, 1975, is that correct?

A That is correct.

Q And it was not until May of 1976 that you received that requested information, is that also correct?

A We received it on May 5, I believe.

Q Did the city at any time notify you by telephone or otherwise as to the reason for the delay in complying with that request for additional information?

A I think at this point, my responsibility for this submission ceased but to answer your question, I don't recall having any conversations with officials from the city wherein they asked for expedited consideration. I will say that I did speak to Mr. McAlister, who called inquiring about the status after the submission had been made, whether any action had been taken on it and that was sometime after May 5. I don't recall what date it was.

[56] Q Now, after the submission in May, the Attorney General on July 6th wrote a letter to the city notifying them that an objection was interposed to the at-large feature of the council election, is that correct?

A Yes, sir.

Q And that is attached as Exhibit No. 6 to the stipulation?

A That is correct.

Q Now, there has been some question raised of the time limits of that.

Would you explain the policies of the decision set out in the guidelines regarding how the time is computed when a submission is made?

MR. McALISTER: We would note an objection.

THE COURT: Now wouldn't that be controlled by the guidelines—

MR. McALISTER: I quoted the statute which of course is known by the Court but I think the Supreme Court has said that certain regulations that have been adopted by the Attorney General pursuant to the statute are reasonable and we set out the regulation in there and we contend that even within the Attorney General's regulation, they are too late.

MR. HANCOCK: We agree, Your Honor, that the statute does set out the time period for responding and there [57] has been the question raised here that two extra days were taken and I would like for Ms. Delaney, have her testimony as to the reason for that, to show that it meets the requirements for the guidelines and the statute.

MR. McALISTER: I think the statute and the guidelines speak for themselves, Your Honor, as well as the calendar.

THE COURT: I think they do too.

MR. HANCOCK: May I could do it without testimony, Your Honor. All my point was, that the 60th day and July the 4th this year fell on Sunday which is a national holiday and Independence Day was celebrated on July 5th and the Court is aware that it was a national holiday and also—

THE COURT: By what authority? By Presidential proclamation?

MR. HANCOCK: Yes, sir, Executive Order 11582 provides for the observance of holidays by Government Agencies and provides that when a holiday falls on Sunday then it is observed on Monday.

THE COURT: That includes the 4th of July?

MR. HANCOCK: I'm sorry, sir?

THE COURT: Does that include the 4th of July?

MR. HANCOCK: Yes, sir, includes all holidays, all national holidays and Independence Day, of course, is [58] one of the national holidays and in 3CFR—it is published in 3CFR and that provides—

THE COURT: That provides that the holiday will be observed on Monday. Does that alter the time limitation for the purpose of the statute, the fact that a Federal Agency would be closed on Monday?

MR. HANCOCK: Well, I think an analogy, Your Honor, would be if pleadings were due in this court on that date, they would not be due to be filed until that following Tuesday, as the clerk's office would be closed and the court would not have been in session.

THE COURT: The rules are specific with respect to that problem.

MR. HANCOCK: I believe the guidelines there are consistent with those rules.

MR. McALISTER: Let me state this, a Presidential proclamation only deals with when federal employees can take leave without it being charged against them. In other words, if the holiday falls on a Sunday, then they can take off on Monday and that won't be counted as a day of annual leave but it doesn't make Monday a national holiday.

MR. HANCOCK: Well, I would disagree with that interpretation.

THE COURT: You have indicated where the regular proclamation is a Presidential proclamation?

[59] MR. HANCOCK: Yes, sir.

MR. McALISTER: I might state, Your Honor, I worked on Monday. It was not a national holiday for me and we usually try to take those.

MR. HANCOCK: Also, Your Honor, the United States Code at Title 5, Section 6104 does talk more, as Mr. McAlister mentioned, about the hourly pay of government employees and that when a national holiday does fall on a Sunday, that they are entitled to the next day as their holiday.

THE COURT: Is there any objection to the Court taking judicial notice of Executive Orders?

MR. HANCOCK: I think you have a right to do that, Your Honor. We also think for the purposes of this case, that the Court can take judicial notice of that as well as the Federal Register that provides for coverage of the State of Alabama.

THE COURT: What is the purpose of the guidelines?

MR. HANCOCK: We have a copy of those guidelines, Your Honor, if the Court would like to have a copy. They are published in 28CFR at Page 136. If the defendants have no objections, we could provide copies of those reports.

MR. McALISTER: We have no objection.

THE COURT: Have you finished your examination?

MR. HANCOCK: No, if I may proceed?

Ms. Delaney, Mr. McAlister, in his opening statement [60] indicated that in each instance in which a proposal or submission was made to the Attorney General, that the Attorney General waited until the last minute to respond

to that change and I think he referred to the fact that, as we were talking with the Court, of the 62 days and another time of 60 days and I would like to ask you whether—when you received this submission from the City of Sheffield, whether you began work on it promptly or whether you waited until the 59th day before you began?

A I recall when we received the submission of the referendum, I began speaking to people in the local area of Sheffield in April. I would have to refer to my notes but that is the first recollection I have as to when I began to make inquiry in connection with the submission.

Q Do you have your notes with you this morning?

A I have them with me but not at the stand.

Q Well, could you refresh your recollection?

A I think they are in my briefcase.

THE COURT: Gentlemen, the Court thinks this question of whether you waited to the last moment allowed by the law or by statute it is not peculiar if you respond within the time allowed by law.

MR. HANCOCK: That is our position, Your Honor.

THE COURT: We could be here indefinitely arguing back and forth whether you responded the first day or the [61] last day or some other day. That issue the Court will hold is irrelevant.

MR. HANCOCK: I have no further questions.

MR. McALISTER: No further questions.

I have no further evidence, Your Honor.

THE COURT: No further evidence?

Does counsel desire oral argument in this case? I think we will have to necessarily require briefs submitted very promptly. The issues have become so complex I think oral argument would be beneficial. What is counsel's view?

MS. DELANEY: I think we can submit briefs, Your Honor, but I would like clarification of what issues the Court would like for us to brief.

THE COURT: Would oral argument say of 15 minutes by the State and closing argument of five minutes and 20 minutes by the Government?

MR. McALISTER: That would be fine.

THE COURT: All right, we will allow the plaintiff 15 minutes and then 20 minutes oral argument by the defendant and five minutes oral argument by the plaintiff.

MS. DELANEY: Your Honor, the defendants have raised several issues which I believe are—should be dealt with. The first one raises a question as to whether the Voting Rights Act is applicable to the City of Sheffield. On this particular matter, I would like to call the Court's attention [62] and ask the Court to take judicial notice of the fact that the Attorney General and the Director of the Bureau of Census on August 7, 1965, made determinations as required under Section IV of the Voting Rights Act that the State of Alabama was subject to the provisions of Section IV and therefore, Section V. That determination was published in the Federal Register and I have copies of the Federal Register, if the Court would care to see them.

THE COURT: Your contention is they cover everything in Alabama?

MS. DELANEY: Yes, Your Honor. In support of that particular proposition, I would like to call the Court's attention to the legislative history of the Act and in particular, to the United States Code and Congressional Administrative News that sets forth the House reports and Senate reports of the statute to indicate first of all—by the way, that is the 1965 Volume and in the House version, at Page 2,456, it says where the entire state falls within the subsection, so does each and every political subdivision within that state.

Then again, on Page 2,554, we are of the view the entire state is covered by Section IV and they must be able to lift the prohibition if any part of it is to be relieved from the requirements of Section IV.

There is another section of the legislative history [63] on Page 2,561 wherein an entire state falls within this subsection so does each and every subdivision within the state and we are referring to Section IV.

I haven't researched this to a great extent but I think that does indicate that a determination of the State of Alabama covers a determination that the political subdivisions in that state are also covered and I think case law of the Supreme Court can be imputed to hold that as well.

Now, the second issue which the City of Sheffield has raised, is even if the Voting Rights Act is applicable to

the City of Sheffield, Section V would not apply for three reasons, apparently. One was that the—if I understand the argument correctly, the city had a commission form of government in 1912 and had that commission form up until the present time and it followed state law in that respect. In that regard, I would like to say and refer the Court to the standard which is set forth in the Voting Rights Act, Section V, which states if a jurisdiction which is covered by the Act shall enact or seek to administer a standard practice or procedure which is different from that which is in force and effect on November 1, 1964 that that is a change within the meaning of Section V and I think the evidence here clearly indicated that the city had a commission form of government and it was entirely different [64] from that they were seeking to implement and that that particular kind of change constituted a change in the practice or procedure different from that that was in force and effect. It doesn't matter what the state law requires. That is not the issue. The issue is whether the City of Sheffield made some sort of a change in voting procedure which is different from that which was in force and effect on November 1st, 1964. That is the way you have to approach the case and not whether the city followed state law. We have no quarrel because I think we understand what the state law provides.

The city has also raised in that regard an argument that this is a proceeding in equity, the Department of Justice has not handled this with clean hands but I would like to say that I think the testimony here before the Court has indicated that the Attorney General has acted within statutorily required time and once information was necessary to reach this determination was submitted to the Department, that any real delay was caused by the city insofar as any final determination of the question at hand is concerned.

The city has also raised an issue whether this Court has jurisdiction to determine the merits of the case and I think this issue can be disposed of rather quickly by citing Allen versus State Board of Elections and (Citation inaudible) both of which are early cases concerning constitutionality of the Voting Rights Act and therein, [65]

both Supreme Court cases the Court indicated the jurisdiction of a three judge district court on coverage question is limited to the very narrow question, limited solely to whether there was coverage and if so, whether preclearance had been obtained and the substantive question, the question of the merits was reserved by this statute to either the Attorney General or through the United States District Court in the District of Columbia and I think the language, if the Court would like for me to cite it is very specific on that point.

Under Allen versus State Board of Elections, on the jurisdictional question, I refer you to Pages — the case is cited at 393 U.S. 544 and I refer the Court to Pages 558 and 559.

THE COURT: These will be included in the brief?

MS. DELANEY: The citations, yes, Your Honor.

I think as far as the 60 day question is concerned, the United States is prepared to submit a brief on that after additional research and I won't argue beyond what has been argued thus far.

I would like to summarize and say that I think on the basis of the stipulation before the Court and the testimony of Mayor Draper and the other testimony that I gave, that the Government has met the task of presenting the evidence that the city had a commission form of government on [66] November 1st, 1964 and made changes which are within the scope of Section V changing the form of government, changing the number of people that were going to be elected, changing the duties and responsibilities of the people who were going to run the City of Sheffield and on all of those changes, I think they come within the meaning of Section V and the question is as to whether the city has adopted and sought to administer changes in the standard practices and procedures that are different from those that were in force and effect in 1964. And that with respect to the at-large election of councilmen, that that change has not received pre-clearance and until the city obtains such pre-clearance, any changes which have been made after November, 1964, which haven't received preclearance are legally unenforceable.

The city does have other options. It may go to the United States District Court and may seek a reconsideration by the Attorney General on its objection but until some sort of pre-clearance is obtained, that change is simply not permissible under federal law.

I think I will close with that.

THE COURT: All right.

MR. McALISTER: May it please the Court, I have told myself writing down here that I won't get emotional about this because I am personally involved as a citizen of the City of Sheffield, Alabama but for the first time [67] in my life as a citizen of this country, I feel the oppression of the federal bureaucracy. I know you all hear the speech everyday by somebody that has been tramped by the government.

The perversion of the Voting Rights Act which started with Allen versus Board of Elections runs full-blown today with the Department of Justice versus the City of Sheffield. As I stated to you before, we are a little, old town of 13,000 people who were trying to do what we felt like was an improvement of the democratic process in our city. We had historically had a commission form of government and like all small towns, we had a hard time getting people to run for the jobs. So the city fathers and the people who were trying to run the city said maybe we can do a little better and get more interest in the town if we change forms of government and get more people involved. So we put it to a vote of the people and the people said, yes, let's try that. So at that point, when the people said, let's change, we set in motion a series of events that were governed by the laws of the State of Alabama. We had no choice about how we would like for those series of events to occur. The state law said how they would occur and we followed to the letter what the state law said and that law culminated in the elections that we held on August the 10th of this year.

Now, the city fathers were pretty good in the [68] prediction of participation by citizens in government. We had 32 candidates who campaigned hard for the various jobs of the city. We got blacks to participate the first time ever in the history of the city and there is a good chance a black will be elected which is good. Our town has 19

percent black population. It is a model area and has been historically as far as race relations, race discrimination and the whole bit, it just hasn't been there. So when this thing dropped out of the sky on us from the Department of Justice, they were going to run in here and enjoin our election, it, to say the least, gentlemen, was a surprise.

Now, to interrupt a democratic process in a political subdivision, whether it be a little, old town like Sheffield, Alabama or a big city like New York, it is the most severe action that anybody can take because every segment of our population must have government and if the court or the Department of Justice comes in and interrupts the orderly transition of government from either one form to the other or the continuation of a form, you have chaos in your political subdivision.

Where is the City of Sheffield right now just with the threat of this suit by the Justice Department. The bond lawyers are up in the air and even with bond issues that have already been bought as to what—is there going to be [69] a government in Sheffield, where is going to be? It has affected our interest rate. Just the confusion and where are we going to be if the Court should decide to throw out the election.

THE COURT: Those are practical problems that the city will face but those are not problems that this Court has the jurisdiction to resolve, does it?

MR. McALISTER: Judge, I think they are practical problems which any Court should consider in making an equitable determination.

THE COURT: But I am talking about the very limited jurisdiction with respect to this matter and the primary jurisdiction of the Court of the District of Columbia and the Attorney General. The issue has been raised about jurisdiction and you are assuming that we have full jurisdiction with all aspects of the controversy as we might in a similar suit brought under the other allegations—other jurisdictional foundation.

MR. McALISTER: No, sir, in considering the relief requested by the Department of Justice, I think this Court has to consider the ramifications of the relief.

THE COURT: If the Government is correct in its contention, the only issue before us is coverage and compliance, in fact, the only issue would be a question of coverage because the Attorney General has disapproved that [70] aspect of it and it is not an appropriate consideration for the Court.

MR. McALISTER: Judge, I hope that is not the law.

THE COURT: Well, we are not so oblivious that we would not understand the practical problems if the election is enjoined. We understand that, but it would help us if we can get to the legal issues which have been raised by the pleadings and by counsel's statements to the Court.

MR. McALISTER: I just wanted to make sure that this Court in its varied experiences has had the opportunity of dealing with a local political subdivision and the necessity for local government.

Now, as to the legal issues involved, I believe they have been set out in the memoranda and at this time, I won't go into them.

THE COURT: All right.

MS. DELANEY: I have no other comments to make.

THE COURT: How quickly can we get briefs submitted? It would be helpful if you take up each of the time limits and the various issues but I don't think it would be of much help to discuss the equity feature.

MS. DELANEY: You would like for us to address the issue of the jurisdictional question and the computation of time?

THE COURT: Yes, ma'am.

[71] MS. DELANEY: Would you want us to brief the question of whether the political jurisdiction falling under the state are covered?

THE COURT: Brief that.

MS. DELANEY: All right. I don't think it would take too long, Your Honor. I think we could have something in court by next week, late next week.

THE COURT: You could have your brief in the Court's hands in one week?

MS. DELANEY: That's right.

THE COURT: Today a week?

MS. DELANEY: That's right.

THE COURT: How about you, Mr. McAlister?

MR. McALISTER: The same time. Or do you want us to reply to theirs after we get theirs?

THE COURT: Yes, sir.

MR. McALISTER: All right, we can reply within three days.

THE COURT: All right, suppose you take one week and then take four days to reply.

MS. DELANEY: Would you expect additional oral argument on that or just the briefs?

THE COURT: No further oral argument.

We would ask that you file your brief with the clerk and send each judge a copy of it. Of course, two of [72] the judges are here in Birmingham, Judge McFadden and Judge Grooms and I am in Montgomery, P. O. Box 1070 and Zip Code 36102. Just mail your briefs to that address.

I think with that, we have the case in hand so that we can dispose of it on the merits.

The court will stand adjourned until further ordered.

CERTIFICATE

STATE OF ALABAMA)

JEFFERSON COUNTY)

I Ray C. Wester, Official Court Reporter of the United States District Court, Birmingham, Alabama, do hereby certify that I reported in shorthand the foregoing proceedings in the trial of the above-styled cause and that the foregoing 72 pages contain a full, true and correct transcript of said proceedings at said time and place.

I further certify that I am neither of counsel nor of kin to any party to said cause, nor in any manner interested in the results thereof.

/s/ Ray C. Wester
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

[Filed Dec. 27, 1976]

Civil Action No. 76-M-1086-NW

(Three-Judge Court)

UNITED STATES OF AMERICA, PLAINTIFF

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF ORDER

Plaintiff, the United States of America, moves this Court pursuant to Rule 59 of the Federal Rules of Civil Procedure to reconsider and amend the Order and Memorandum Opinion entered on December 13, 1976, so as to withdraw those portions thereof which conclude 1) that the City of Sheffield is not a political subdivision within the meaning of the Voting Rights Act of 1965, as amended, and therefore not subject to the provisions of Section 5 of the Act and 2) that the failure of the Attorney General to object to the referendum constituted approval of the change to the mayor-council form of government. Plaintiff further moves that this Court establish a briefing schedule to permit the parties herein to fully and adequately brief the aforementioned issues and to set them for oral argument. As grounds for this Motion, the United States alleges as follows:

1. This Court's Memorandum Opinion and Order of December 13, 1976, found that the Attorney General's July 6 objection was timely interposed and, on the basis of that finding, partially granted the United States' Rule 59 Motion for reconsideration of this Court's previous

opinion and order of September 29, 1976. However, on the basis of its other conclusions concerning coverage under the Voting Rights Act and the effect of the Attorney General's non-objection to the referendum election in the City of Sheffield, this Court denied the United States' request for an injunction and dismissed the Complaint.

2. The Voting Rights Act of 1965 was enacted primarily to enforce the guarantees of the Fifteenth Amendment and Section 5 is one of a complex scheme of remedies aimed at states where voting discrimination based on race or color had been most flagrant.

3. The issues at stake here are of major public importance and affect the Attorney General's enforcement responsibilities under the Voting Rights Act which is regarded as one of the most effective civil rights statutes ever enacted by Congress.

4. The fact that the Voting Rights Act has been extended twice since 1965, most recently in 1975, demonstrates that Congress has been kept well informed concerning the operation of the statute and the manner in which it has been enforced by the Attorney General. Indeed, Congressional opposition to the statute has lessened considerably since 1965, due in large measure to increased understanding of the statute and its effectiveness.

5. The Attorney General, as the chief legal officer of the United States responsible for enforcing this legislation, including Section 5, has consistently interpreted the Act, and decisional law supports that interpretation, as requiring that changes affecting voting occurring in cities within Alabama and in other states covered by the special provisions of the Act must obtain federal preclearance pursuant to Section 5 without regard to whether such cities conduct voter registration.

6. The Attorney General's enforcement of Section 5 with respect to cities in Alabama which do not conduct voter registration is based upon the statutory language, the legislative history of the statute and the clear intent of Congress that Section 5 should apply to any changes affecting voting accomplished within a state which has been determined to be covered pursuant to Section 4(b), whether those changes are enacted or administered by the

state directly or indirectly by virtue of the power vested in local governments by the state. The intent of Congress was that "all changes, no matter how small, be subjected to § 5 scrutiny." *Allen* v. *State Board of Elections*, 393 U.S. 544, 568 (1969). Such an interpretation is wholly consistent with the term "state" as embodied in the Fifteenth Amendment and with the intent of Congress regarding the operation of the other special coverage provisions of the statute, *i.e.*, § 4(a), § 6 and § 8. That Congress intended these provisions to apply anywhere in a state or political subdivision covered by Section 4(b) is perhaps most clearly demonstrated by the burden those jurisdictions must meet if they are to successfully "bail out" from under coverage of the special provisions. Thus, there must be a determination that the right to vote of no citizen has been denied or abridged on account of race or color anywhere within the covered state or political subdivision. Therefore, an interpretation of Section 5 which centers upon function rather than geography is wholly inconsistent with the intent of Congress. Indeed, it would be no small irony if Congress, in enacting the Voting Rights Act of 1965, exempted the City of Selma, Alabama, from the special coverage provisions.

7. Congress, fully aware of the Attorney General's enforcement efforts vis-a-vis such cities, as well as those of private litigants also seeking to enforce the guarantees of Section 5, has never advised the Attorney General that he has exceeded his statutory authority by requiring such cities to obtain federal preclearance pursuant to Section 5; nor has Congress questioned his authority to proceed in this manner.

8. Since 1965, cities in almost every county in Alabama have submitted changes affecting voting to the Attorney General for Section 5 preclearance, including the City of Sheffield, voluntarily, at the request of the Department of Justice or pursuant to court order. We note that the Northern District of Alabama has itself heretofore ordered cities to comply with the requirements of Section 5.

9. With regard to the effect of the Attorney General's failure to object to the referendum, the record amply demonstrates that there was considerable uncertainty as to whether the City of Sheffield was obliged to follow the directives of Title 37, § 426, Code of Alabama (Recomp. 1958). Language in the referendum proposition, in the statute governing the abandonment of commission forms of government, *i.e.*, Title 37, §§ 120-133 Code of Alabama (Recomp. 1958) and in Exhibit 3 of the Stipulations of Fact raised the possibility that the City was not so obliged. Furthermore, the City of Sheffield did not adopt ward boundaries until December, 1975. Therefore, the Attorney General could not have given approval to the change in form of government when, at the time the referendum was submitted for preclearance, the City had not even finalized all the changes involved in the governmental reorganization.

10. The issue of whether the City of Sheffield is a "political subdivision" within the meaning of the Voting Rights Act and for that reason subject to the provisions of Section 5 was not asserted as a defense in the defendants' answer or raised as an issue in the September 3, 1976, hearing on the merits of this action. That issue was first raised in the Post Trial Brief for Defendants. The issue regarding the effect of the Attorney General's nonobjection to the referendum was not raised by defendants but by the Court in its December 13, 1976, opinion. Neither of these issues as such has been briefed by the parties. Since these issues, particularly the coverage issue, are vitally important for the reasons set forth above, this Court should establish a briefing schedule and hear arguments on briefs before a decision on the merits is determined.

WHEREFORE, the United States prays that this Court set this Motion for a prompt hearing and, on the basis of this Motion and the other evidence in the record, prays that the Court reconsider and amend its Order of December 13, 1976, by withdrawing the specified portions and

enter an Order granting the additional relief requested on page 1 of this Motion.

Respectfully submitted,

WAYMAN G. SHERRER
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J. STANLEY POTTINGER
Assistant Attorney General

/s/ Sheila K. Delaney
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CERTIFICATE OF SERVICE

I certify that I have served copies of the foregoing Plaintiff's Motion for Reconsideration and Amendment of Order by mailing copies thereof, postage prepaid, to opposing counsel of records, to wit:

Vincent McAlister, Esquire
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P. O. Drawer N
Sheffield, Alabama 35660

This the 23rd day of December 1976.

/s/ Sheila K. Delaney
SHEILA K. DELANEY
Attorney
Department of Justice
Washington, D. C. 20530

SUPREME COURT OF THE UNITED STATES

No. 76-1662

UNITED STATES, APPELLANT

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

APPEAL from the United States District Court for the Northern District of Alabama.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

June 27, 1977

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1662

UNITED STATES OF AMERICA,

Appellant,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1662

UNITED STATES OF AMERICA,

Appellant,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the district court be affirmed on the ground that the questions are unsubstantial and do not warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree enter on December 13, 1976, by a district court of three

judges specially constituted pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284, denying appellant's application for an injunction to enjoin a city election in Sheffield, Alabama, on August 10, 1976, and dismissing appellant's complaint.

This litigation concerns an election of a mayor, president of the city council and eight councilmen under a mayor-council form of government in Sheffield, Alabama. Sheffield is a small town with a population of approximately 13,000. It is located in Colbert County, Alabama, and the county fully handles the registration of all voters in the county, including voters in Sheffield. This is done through the County Board of Registrars which is in accordance with the state law of Alabama. Sheffield does not register voters.

The town was incorporated in 1885 by the Alabama Legislature under a mayor-council form of government, and it retained this form of government until 1912 when the voters decided to change to a commission form of government. Three commissioners were elected from the town at large. The commission form of government was continually in effect from 1912 until August 10, 1976, when the town returned to a mayor-council government as the result of a special referendum conducted on May 13, 1975, in which a majority of the citizens voted in favor of changing the form of government.

Title 37 of the Code of Alabama contains the basic state statutes which govern the creation, organization and functioning of cities in the state of Alabama. Title 37 §426 Code of Alabama 1940 (Recomp. 1958) provides that in cities of 12,000 to 20,000 population with a mayor-council form of government, two aldermen are elected at large from each ward, and a mayor and president of the council are likewise elected at large. The most recent federal census shows Sheffield's population as 13,115. Consequently, Sheffield was required by state law to elect its council members at large. Pursuant to the provisions of Alabama law following the referendum on May 13, 1975, the town was divided into four wards of near equal population as follows:

Ward	*Population*	*Black*	*White*
1	3,307	50	3,257
2	3,245	2,222	1,023
3	3,188	254	2,934
4	3,375	0	3,375
Total	13,115	2,526	10,589

From these figures it is noted that only 19 percent of the city population is black. Black citizens have historically voted in the city, and there was no substantial increase in the number of registered black voters in the city following the adoption of the Voting Rights Act.

It is also noteworthy that during the history of Sheffield, no black citizen had ever been a candidate for public office until the town decided to return to the mayor-council form of government, and held its election on August 10, 1976. Four black citizens qualified to run for council seats. In one race a black candidate received 47 percent of the total vote cast (black citizens compose only 19 percent of the total population of Sheffield) although he lost. In a separate race a black candidate was in a run-off against a white candidate, and the black candidate won the election. Sheffield has always enjoyed an excellent relationship between its white and black citizens, and was one of the first, and possibly the first, town in Alabama to integrate its school system which it did voluntarily several years prior to the majority of other towns and prior to the advent of the Voting Rights Act. Black citizens participate fully in the governmental process in Sheffield and have representatives on or in most all boards and departments.

By letter of March 20, 1975, the city advised the Attorney General of the United States of the proposed referendum for a change in the form of government. The city did not feel that the Voting Rights Act applied, but the letter was written out of an abundance of precaution, and this was so stated in the letter. The Attorney General did not object at that time or any time prior to the referendum. It was not until May 23, 1975, ten days after the referendum, that the Attorney

General next wrote, and even then he did not object to the referendum, but sought to retain the right to object any time in the future should he so desire.

Officials of the City of Sheffield were in telephone contact with attorneys in the Justice Department between March 20, 1975, and May 13, 1975, the date of the referendum, and were in frequent contact with the same attorneys from then until July 6, 1976, and at no time did the Justice Department indicate that it had any objections to Sheffield's change of government. There were only two letters received from the Justice Department after its letter of May 23, 1975, until the scheduled election on August 10, 1976. It was not until July 6, 1976, approximately 30 days prior to the election and after the town and candidates had gone to great expense, that the Attorney General advised the city as follows:

> "In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights."

Under Alabama law, Sheffield was compelled to have its form of government changed pursuant to the referendum mandating the change, including the election of council members "at large," and the Attorney General's office was fully aware of this law even before the referendum was held on May 13, 1975. The municipal election was scheduled for August 10, 1976, in accordance with state law; the Attorney General filed suit to enjoin the election on August 9, 1976. After a hearing on the merits, the district court denied the injunction and dismissed appellant's complaint. The final

order of the district court was entered on December 13, 1976.

ARGUMENT

The decision of the district court is plainly correct. The issues in this case are uniquely narrow, and no amount of strained semantics or legal gymnastics can convert it into a matter warranting review by this court, and the decision of the lower court should be summarily affirmed.

Section 5 of the Voting Rights Act (hereinafter called the Act), 42 U.S.C.A. 1973c provides the preclearance procedure for certain anticipated changes in voting practices by designated states or "political subdivisions." This section provides as follows:

> "Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 4(a) based upon determinations made under the first sentence of Section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on . . ."

Section 14 of the Act, 42 U.S.C.A. 1973 *l*(c)(2), provides:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

Manifestly, the City of Sheffield is not a "political subdivision" within the above-stated definition. The City of Sheffield, as a municipal corporation under existing Alabama law, has no authority to supervise or conduct voting registration. The Alabama Legislature has specifically designated the County Boards of Registrars of the several counties solely and exclusively as the registrars of voters in this state. Title 17, §21, Code of Alabama (Recomp. 1958);

see also Title 37, §34(34) Code of Alabama (Cum. Suppl. 1973).

Therefore, since in Alabama registration for voting is conducted under the supervision of the county, and only under the supervision of the county, then the City of Sheffield is not included within the definition of the term "political subdivision" found in Section 14 of the Act.

To reach this conclusion, no tortured construction of the statute is required. On the contrary, the application of well established rules of statutory interpretation directly supports this conclusion.

The Supreme Court of the United States has declared that "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States,* 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192, 194 (1917). The court further said that . . . "where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Id.* This rule is widely known as the plain meaning rule and is frequently encountered in judicial decisions. See *Sands, Sutherland Statutory Construction,* Sec. 46.01 (1973) and cases collected therein. Under this rule, if the statutory language is plain, unambiguous and uncontrolled by other parts of the Act or other acts upon the same subject, the court cannot give it a different meaning. Obviously, statutory definitions control the meaning of statutory words. The statutory language in Section 14 is straightforward; no attempt is made to define the term "political subdivision" in any other portion of the Act or in any other related act. Applying the plain meaning rule of statutory interpretation, the definition of political subdivision in the Act may not judicially be expanded to embrace the City of Sheffield.

In our case the Act is not ambiguous and the construction placed on the Act by the Department of Justice is plainly erroneous.

The legislative history of Section 14 of the Act makes it clear that this section was intended as a restriction on the coverage of the Act.

> "Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State *which conducts registration for voting.* This definition makes clear that the term 'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting." *1965 U.S. Code Congressional and Administrative News,* p. 2569; see also p. 2464. (emphasis added)

H.R. 6400 was the voting rights bill drafted by the Department of Justice during the Johnson administration and was offered in the House of Representatives by Hon. Emanuel Celler (Chairman of said Subcommittee). At the hearings before said Subcommittee on said bill held in March of 1965, Hon. Nicholas Katzenbach, Attorney General of the United States, was the first witness, and it was his testimony that explained H.R. 6400 to the Subcommittee. "Political subdivisions" were not defined in H.R. 6400 as originally drafted and the questions to him showed what was the intended meaning by that phrase. This testimony resulted in a request by Representative Tenzer that H.R. 6400 be amended to define the term "political subdivisions."

> "Mr. Tenzer. Thank you, Mr. Chairman. I just have one question. Since you agree to define in the law the term 'election,' would you also agree to define the term 'political subdivision', so there would be no question about that *as one that regularly maintains a system for registering voters*?
>
> Mr. Katzenbach. I think it might be a good idea to define political subdivision. I think the committee ought to consider giving it consideration." (p. 121) (emphasis added)

This amendment of H.R. 6400 took the form of Section 14(c)(2) of the Act. 42 U.S.C.A. §1973 *l*(c)(2). Also, it is important to note that Mr. Katzenbach's testimony shows absolutely no question on his part that the meaning of "political subdivisions" was to encompass those areas responsible for registering voters, and it was not intended to go any farther down the scale. In fact, Mr. Katzenbach acknowledged that he knew that "political subdivisions" only covered *counties* in Alabama. The Katzenbach-Subcommittee colloquy found in the transcript of the hearings before said Subcommittee is as follows:

"The Chairman. The bill also refers to 'political subdivisions.' How far down the political scale does that go?

Mr. Katzenbach. I believe that the term 'political subdivision' used in this bill is intended to cover the registration area and that the whole bill really is aimed at getting people registered.

Mr. Chairman. For example, in New York we have what is called an assembly district where the representatives of the lower house of the State legislature are elected. Such assembly districts are then broken down into election districts. I take it that an election district would be deemed a political subdivision?

Mr. Katzenbach. I think that is possible, Mr. Chairman, but, frankly, you are more familiar with how registration is accomplished in New York than I am. *I know how it is accomplished or not accomplished in Alabama.*

Mr. Chairman. What would be the lowest possible political unit in the scale?

Mr. Katzenbach. What is the area in which registration is done in New York? I am not familiar with that, Mr. Chairman.

The Chairman. In New York, it is the so-called election district, but what would it be in some of the States that would be affected here?

Mr. Katzenbach. Throughout the affected States, in the South, it is a county or parish under the present law; parish in Louisiana." (p. 21) (emphasis added)

"Mr. McCulloch . . . If in the State of New York in 1964 there was a political subdivision where less than 50 percent of the people voted or were registered to vote, wouldn't that trigger this bill in that political subdivision in the State of New York?

Mr. Katzenbach. I think it could, Congressman. I think the only way in which we can gather valid statistics here is really—we are aiming at voter registration and *I think the term 'political subdivision' is used here aimed primarily at the area in which the registration process takes place.*" (p. 51) (emphasis added)

"Mr. Rogers. Section 4(a), provided that when the Attorney General certifies that he has received the complaints in writing from 20 or more residents of a political subdivision * * * what do you interpret as a political subdivision in that case?

Mr. Katzenbach. I believe the political subdivision there means the same thing as it means in Section 3, Congressman." (p. 53)

"Mr. Cramer. In every city or political subdivision in every county?

Mr. Katzenbach. *Political subdivision, as I attempted to say, in my judgment means that area for which people are registered and within which a registrar board operates. It is called different names in different States.* That is the reason for using the term 'political subdivision,' but it is meant to be coincidental with the area under the supervision of a board of registration or election." (p. 78) (emphasis added)

"Mr. Gilbert . . . Mr. Attorney General, I don't wish to belabor the point, about political subdivision, but in the State of New York there is a problem which would concern political subdivisions and I would like to have a definite statement from you on political subdivisions.

Mr. Katzenbach. All right Congressman, I'll be happy to provide that.

Mr. Gilbert. I wonder if we could have it on the record today, or would you prefer to provide that at a later date?

Mr. Katzenbach. I attempted to make my general statement as to what a political subdivision is but I cannot apply that to New York without knowing more than I do about how the registration works.

Mr. Gilbert. In New York, we have a City Board of Elections and they have offices in each county. Also, as the chairman pointed out earlier in the hearing, I believe it was yesterday, we have assembly districts in which a person is elected to the New York State Legislature. We also have in these assembly districts election districts where there are registrars or members appointed by the Board of Elections to register people.

Now, that small compact unit of election districts, would that be considered a political subdivision?

Mr. Katzenbach. Is each of these election districts run as a separate area for purposes of registration?" (p. 120)

Thereafter at page 121 of the transcript of said hearings follows the above quoted testimony relative to establishing a definition in the Act for "political subdivisions."

The Department of Justice devotes considerable wordage in its jurisdictional statement to certain statements by Senator Herman Talmadge of the State of Georgia as supportive of its position. It must be kept in mind that Senator Talmadge's state did have voter registration by cities at the time he made the quoted statement. See *Ga. Code Ann.* §34A-502. Therefore, Georgia's cities were covered by the Act. It is our understanding that Georgia recently changed its law and that cities do not presently conduct voter registration. The Department of Justice has not accepted the fact that voter registration is conducted differently in the various states. Mr. Katzenbach and the Department of Justice knew at the time the Act was introduced that in Alabama the cities do not register voters, but that they are registered by the counties. He specifically discussed this at the hearings before the House Subcommittee. Therefore, appellees contend that the various reports of the Attorney General or the Department of Justice to the Congress have been misleading in assuming application of the Act to cities in Alabama. The Department of Justice,

as the drafter of the Voting Rights Act, knew its limitations better than anyone, and if it has been applied to cities in Alabama, it was erroneously done so. There was never any jurisdiction to apply the Act to a city which is not responsible for registering voters, and if this point had been properly raised, the cases should have been dismissed.

The Voting Rights Act and its history are crystal clear. Cities in Alabama are not subject to the preclearance provisions under Section 5 of the Act. The Department of Justice's argument that state coverage includes every political body within such state is not in conformity with the law, with the clear and unambiguous language of the Act or the legislative history. For some unknown reason the Department of Justice equates the way the "Attorney General has consistently interpreted the Act" with law. The expansion of the Act which began with *Allen v. State Board of Education*, 393 U.S. 544, 22 L.Ed.2d 1, 89 S.Ct. 817 (1969), was further extrapolated by the Department of Justice in its contentions in this case, that is, the Department of Justice equated the Attorney General's interpretation to law, all under the guise of doing "what is right." The Attorney General is requesting this court to enforce an idea or theory diametrically opposed to a legislative act.

Several states, including Alabama, were listed by the Attorney General in the *Federal Register* dated August 7, 1965, on page 9897, as provided by the Voting Rights Act, and several political subdivisions of states were listed by the Director of the Census. Nowhere is Sheffield, Alabama, listed however. If it had been intended that every political subdivision in a listed state was also covered by the Act, the Act could have so stated, but it does not. It would have been a simple matter for the drafters of the Act to have inserted an additional sentence such as "In any instance where the Act applies to a state, every political subdivision within the state is included." Nowhere, however, does such a sentence appear, but to the contrary the phrase "political subdivision" is specifically defined in Section 14(c)(2), 42 U.S.C.A.

1973 *l*(c)(2), as meaning only counties (in the case of Alabama) since the registration of voters is conducted under the supervision of counties in Alabama.

The Department of Justice argues as a rule of statutory construction that the reenactment of a statute of Congress in the face of administrative construction is persuasive of a legislative recognition and approval of the statute as thus construed. At best, the reenactment of a statute is a nebulous foundation for statutory construction since it is merely one factor in the total effort to give fair meaning to language. The rule offered by the Department of Justice is no more than an aid in statutory construction, useful at times in resolving statutory ambiguities. *Helvering v. Reynolds*, 61 S.Ct. 971, 85 L.Ed. 1438, 313 U.S. 428, *United States v. Missouri Pacific RR*, 49 S.Ct. 133, 73 L.Ed. 322, 78 U.S. 269, and *Campbell v. Brown*, 245 F.2d 662 (5th Cir. 1957). The reenactment of a statute which has been construed by the Department of Justice is not an adoption of such construction unless the prior statute was itself ambiguous. *Helvering v. Elkins*, 58 S.Ct. 379, 82 L.Ed. 431, 402 U.S. 573. Moreover, the rule applies only where the construction by the Department of Justice is not plainly erroneous. *United States v. Missouri Pacific RR*, supra.

As stated before in this argument, the Act is not ambiguous, has never been ambiguous, and the construction placed on the Act by the Department of Justice is plainly erroneous.

The lower court was of the further opinion, and the appellees feel rightfully so, that by approving the referendum to change the form of government that the Attorney General in fact approved the change to the mayor-council form of government notwithstanding his caution to the town that the change also was subject to preclearance. Prior to his approval of the referendum, the Attorney General knew of the provision of Title 37 §426, Code of Alabama 1940 (Recomp. 1958) which provides for the "at large" election of council members. He knew that if the voters approved the change in

form of government that the city would be obliged under state law to hold elections to elect a mayor, president of the city council and council members, all at large, and there was no way anyone could halt the election once it reached this stage. His approval of the referendum therefore was an implicit approval of the new government.

By approving the referendum, the Attorney General terminated his authority under the Act to continue to oversee the results of the "change" which he had already approved. See *Jenness v. Little*, 306 F. Supp. 925. In effect, the Attorney General has sought in this case to object to specific effects of the referendum which he had already approved, which effects are required under Alabama law, and which effects he knew would take place when he approved the referendum initially. The Attorney General has terminated and exhausted his authority under the Voting Rights Act to further oversee the consequences of his approval.

The government takes the position on page 17 of its jurisdictional statement that the decision in this case conflicts with the decisions of other three-judge district courts. So far as the appellees have been able to determine, it was never raised as a defense in any of those cases that cities which do not register voters are not covered by the Act. The government cites two cases from the United States District Court for the Northern District of Alabama as authority for its position, *Woodard v. Lanier, et al.* N.D. Ala. No. CA 74-H-752-S, and *Darden v. City of Hueytown*, N.D. Ala. No. 76-P-1126-S. In the *Woodard case* the defendants admitted and stipulated that the City of Bessemer was covered by the Act. The Department of Justice attorneys also tried very hard to get the appellees in this case to stipulate that Sheffield was covered by the provisions of the Act. Appellees refused to so stipulate, because it was never felt or believed that the Act applied to the town of Sheffield.

It is noteworthy that one of the three judges sitting on the panel which heard the *Darden case* also was a member of the panel which heard the instant case. If the argument had been

made that the City of Hueytown was not a "political subdivision" within the meaning of the Act, he certainly would have been aware of it.

If there had been any reported decisions, or any decisions anywhere that "nonregistering cities" are included in the definition of "political subdivisions" or are covered by the provisions of the Voting Rights Act, certainly the government would have cited them to the district court in this case, but no such citations were made. The case of *Perkins v. Mathews*, 400 U.S. 379, 27 L.Ed. 476, 91 S.Ct. 431 (1971), is not applicable to this decision; the defense raised in the instant case could not have been raised in *Perkins*, because the city involved in that case, Canton, Mississippi, did register voters, and therefore, did fall within the definition of "political subdivision" found in Sec. 14 of the Act, 42 U.S.C.A. 1973 *l*(c)(2).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the appellant has presented no substantial question for the decision of this court, and that the judgment and decree of the district court should be affirmed.

Respectfully submitted,

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June 13, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion to affirm has been served on Messrs. Wade H. McCree, Jr., Drew S. Days, III and Walter W. Barnett, and Ms. Judith E. Wolf, attorneys of record for appellant, by mailing copy of said motion to each of them, postage prepaid and properly addressed.

This the 13th day of June, 1977.

BRAXTON W. ASHE
Of Counsel for Appellees

Supreme Court, U. S.
FILED
AUG 12 1977
MICHAEL RODAK, JR., CLERK

No. 76-1662

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, APPELLANT

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The district court's opinions of December 13, 1976 (J.S. App. C, pp. 9a–19a) and March 31, 1977 (J.S. App. B, pp. 2a–8a) are reported at 430 F. Supp. 786.

JURISDICTION

The order of the three-judge district court denying the United States' application for an injunction under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. (Supp. V) 1973c, dismissing the complaint, was entered on December 13, 1976 (J.S. App. D, pp. 20a–21a). The district court's order denying the motion of the United States for reconsidera-

tion was entered on March 31, 1977 (J.S. App. A, p. 1a).

The United States filed a timely notice of appeal on May 11, 1977 (J.S. App. E, p. 22a), and this Court noted probable jurisdiction on June 27, 1977. The jurisdiction of this Court rests on 42 U.S.C. (Supp. V) 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections,* 393 U.S. 544, 560–563; *Perkins* v. *Matthews,* 400 U.S. 379.

STATUTES INVOLVED

Sections 4, 5, and 14(c)(2) of the Voting Rights Act of 1965, 79 Stat. 438–439, 445, as amended, 42 U.S.C. (Supp. V) 1973b, 1973c and 1973l(c)(2), respectively, are set forth in the appendix to the jurisdictional statement (J.S. App. F, pp. 23a–29a).

Title 37, Section 426 of the Code of Alabama (Cum. Supp. 1973) provides in pertinent part:

> In cities having a population of twelve thousand or more, there shall be elected at each general municipal election the following officers, who shall compose the city council for such cities, and who shall hold office for four years and until their successors are elected and qualified, and who shall exercise the legislative functions of city government and any other powers and duties which are or may be vested by law in the city council or its members: A president of the city council, and in cities having seven wards or less, two aldermen from each ward, to be elected by the qualified voters of the several wards voting separately in every ward, except in cities of less than twenty thousand

> population, in which two aldermen from each ward shall be elected by the electors of the city at large, in cities having more than seven wards, one alderman from each ward, and a sufficient number of aldermen from the city at large to make the total number of aldermen fourteen exclusive of the president of the council * * *. Provided however, that the city council of any city having a population of twelve thousand or more may by ordinance or resolution, if adopted by two-thirds vote of the city council more than six months prior to any general municipal election, provide that the city council of said city shall consist of five aldermen to be elected from the city at large. * * *

QUESTIONS PRESENTED

1. Whether voting changes enacted by a city which is within a state designated for coverage under Section 4 of the Voting Rights Act of 1965 must be precleared under Section 5 of the Act before they may become effective.

2. If so, whether the Attorney General's decision to interpose no objection to the holding of a referendum on changing from a commission to a mayor-council form of government constituted clearance of the at-large election of city councilmen under the new form.

STATEMENT

This case involves the application of Section 5 of the Voting Rights Act to certain fundamental changes in the structure of government in the City of Sheffield, Alabama. Sheffield has a population of 13,115,

of whom 19 percent, or 2,526, are black. Eighty-eight percent of the black population resides in one of the city's four wards, where they comprise approximately two-thirds of that ward's population (Stip. Ex. 5; App. 63).[1]

Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c, provides: "Whenever a State or political subdivision [covered under Section 4 of the Act] shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 * * *" the change has no effect as law unless "such State or subdivision" obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Alternatively, the change may be enforced if the Attorney General has interposed no objection to it within 60 days after its submission to him. States or political subdivisions are subject to Section 5 if they are "covered" by Section 4(b); that is, if they maintained any test or device (as defined by Section 4(c) of the Act, 42 U.S.C. 1973b(c)) as a prerequisite for voting or registration on November 1, 1964, as certified by the Attorney General, and if the Director of the Census determines that less than

[1] "Stip. ———" refers to the [illegible] of fact, and exhibits attached thereto, filed by the parties in the district court. The stipulations and exhibits are reprinted at App. [illegible]–65.

50 percent of the persons of voting age residing within the state or political subdivision were registered on November 1, 1964, or that less than 50 percent of the persons of voting age voted in the presidential election of that year.[2]

On August 6, 1965, the Attorney General and the Director of the Census designated the State of Alabama as covered by Section 4 of the Voting Rights Act. 30 Fed. Reg. 9897. Between August 6, 1965, and June 30, 1977, the Attorney General received for clearance submissions of more than 1,000 changes from the State of Alabama and from cities and counties within it. More than 700 of these submissions were tendered by cities within the State.[3]

On March 20, 1975, the City of Sheffield, Alabama, wrote the Attorney General to "give notice of the proposal of submitting to the qualified voters of the City, whether the present commission form of government shall be abandoned in favor of the Mayor

[2] The operative dates were extended to November 1, 1968, by Pub. L. 91–285, 84 Stat. 315, and to November 1, 1972, by Pub. L. 94–73, 89 Stat. 402.

[3] These figures were derived from a survey of Department of Justice records by the Voting Section of the Department's Civil Rights Division. The record in this case includes a list of all Section 5 submissions made to the Attorney General from August 6, 1965 through January 10, 1977, and the Attorney General's disposition of each submission. This list includes changes submitted by cities within the State of Alabama and by cities and non-registering governmental bodies (*e.g.*, school districts and water districts) within other designated states (Ex. B to Plaintiff's Brief in Support of Motion for Reconsideration and Amendment of Order of December 13, 1976).

and Alderman form * * *." The City stated that "[p]resent existing voting wards are not changed at the time of voting (but may be equitably adjusted at a later date) and in the case of the City of Sheffield, Alabama, the form of government (mayor-alderman) existed in 1912 and if the present commission type is abandoned, the previous form would automatically be reinstated" (Stip. Ex. 1, App. 14). On May 13, 1975, the City's voters approved the proposal (J.S. App. C, p. 10a).

The Attorney General replied to the City on May 23, 1975. He stated that he "does not interpose an objection to the holding of the referendum," but pointed out that his failure to object "does not bar any subsequent judicial action to enjoin the enforcement of the change;" he also noted that "[s]ince voters in the City of Sheffield elected to adopt the mayor-council form of government on May 13, 1975, that change is also subject to the preclearance requirements of Section 5" (Stip. Ex. 2, App. 16).

The Attorney General's letter also requested that the City submit detailed information concerning the change, including a description of "the aldermanic form of government which existed in 1912 and the method by which it was elected, *i.e.*, the number of aldermen, the terms and qualifications for the mayor and aldermen, whether the aldermen were elected at-large or by wards, whether there were numbered post, residency, majority vote or staggered term requirements for the aldermanic seats, and whether single-shot voting was prohibited" (Stip. Ex. 2, App. 17). See 28 C.F.R. 51.10(b).

Thereafter, the City informed the Attorney General that under Alabama law[*] the City would be divided into four wards of substantially equal population, that each ward would have two council seats, that councilmen from each ward would be elected at large, and that candidates would run for numbered places (Stip. Ex. 3, App. 26).

The City later furnished, in response to the Attorney General's request, a detailed map showing ward boundaries, population distribution by race for each ward, and the history of black candidacy for city and county offices since 1965 (Stip. Ex. 4, App. 58–60).

On July 6, 1976, the Attorney General notified the City that he did not "interpose any objection to the change to a mayor-council form of government * * * to the proposed district lines or to the at-large election of the mayor and the president of the council." However, the Attorney General objected to implementation of the proposed at-large method of electing city councilmen because he was "unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect" (Stip. Ex. 6, App. 64–65).

Notwithstanding the Attorney General's objection, the City scheduled an at-large council election for August 10, 1976. On August 9, the Attorney General filed this action to enforce his Section 5 objection. A temporary restraining order was denied and the election was held. On December 13, 1976, the three-judge

[*] Code of Ala., Title 37, § 426 (Cum. Supp. 1973).

district court convened under Section 5 dismissed the complaint[5] on the ground that that section of the Act provides that only designated states and political subdivisions of states need submit proposed changes in their voting laws for preclearance. A political subdivision is defined in Section 14(c)(2) of the Act, 42 U.S.C. 1973*l*(c)(2), as a county or parish, "except that where registration for voting is not conducted under the supervision of a county or parish," the definition includes any other subdivision which does conduct registration. The district court concluded that the City of Sheffield was not a political subdivision because in Alabama registration is conducted by the counties (J.S. App. C, pp. 14a–15a).[6] Because the

[5] The district court's order of December 13, 1976, withdrew a previous opinion and order of the court, entered September 29, 1976, holding that the Attorney General's objection had been one day late. On reconsideration the court concluded that the 60-day period for interposing an objection under Section 5 expired on July 6, 1976, the next full business day after the 1976 Independence Day holiday (J.S. App. C, p. 11a). See 5 U.S.C. 6103; Executive Order 11582, 36 Fed. Reg. 2957; and 28 C.F.R. 51.3(c).

[6] See Title 17, § 21, Code of Ala. (Recomp. 1958); Title 37, § 34(35), Code of Ala. (Cum. Supp. 1973). The court also held that "by approving the referendum the Attorney General in fact approved the change to the Mayor-Council form of government notwithstanding his caution to the City that the change was also subject to pre-clearance." J.S. App. C, p. 15a. Because Code of Ala., Title 37, § 426 (Cum. Supp. 1973) provides that in Alabama cities of less than 20,000 population, two aldermen from each ward shall be elected at large, the court concluded that the Attorney General's failure to object to the holding of the referendum ended his authority to object to voting changes to be effected under Section 426 if the proposal for a mayor-council government prevailed. Judge Rives declined to concur in this portion of the opinion (J.S. App. C, p. 19a).

question whether changes in the City's government are subject to preclearance had not been briefed or argued before the district court, the United States moved for reconsideration of the ruling and presented evidence in support of its position that preclearance is required. The court denied the motion (J.S. App. A), adhering to its prior position that the definition of "political subdivision" in Section 14(c)(2) "defines the extent of applicability of Section 5 obligations in designated states" (J.S. App. B, p. 6a).

SUMMARY OF ARGUMENT

1. "The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting," and, to effectuate this intention, Congress "marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively." *South Carolina* v. *Katzenbach,* 383 U.S. 301, 315, 337. By holding that cities and other political entities that do not conduct voter registration are excluded from the preclearance requirements of Section 5, even though the states within which they are located are covered by Section 4 of the Act, the district court has severely limited the statute's effectiveness. The district court's ruling is contrary to the Act's structure, its original legislative history, the Attorney General's consistent interpretation of it since its adoption in 1965, and Congress' endorsement of that interpretation upon extending and amending the Act in 1970 and 1975.

The district court based its holding on the proposition that because Sheffield is neither a state nor a

political subdivision, it is not subject to Section 5, which provides that "[w]henever a state or political subdivision" for which coverage determinations have been made under Section 4 seeks to enact a voting change, it must first comply with the preclearance procedure of Section 5. However, when Sections 5 and 4(b) are read in light of the Act's structure, purpose, administration and legislative history, it is clear that all political units within a state which has been designated under Section 4(b), and all political units within a separately designated political subdivision, are subject to Section 5. Only when the state, itself, is not designated under Section 4(b) does it become pertinent to consider, for purposes of Section 4, the definition of "political subdivision" in Section 14(c)(2). If the state has been designated, all local instruments of the state, including counties, parishes and other bodies, are within Section 4's coverage, regardless of whether such entities conduct voter registration. Indeed, the district court noted that if a state is designated, voting changes enacted by "political subdivisions" within that state are automatically subject to Section 5, although such political subdivisions have not been separately designated under Section 4 (J.S. App. B, p. 6a; J.S. App. C, p. 13a).

The legislative history of the 1965 Act shows that Congress understood that local units of government within designated states would be subject to the Act's requirements. In accordance with the Act's structure and history, the Attorney General has consistently

interpreted it as requiring cities and other units of local government to submit proposed changes under Section 5, regardless of whether such units conduct voter registration. This construction of the Act has been endorsed by Congress. In both 1970 and 1975, members of Congress cited examples of voting changes by municipalities and other political units which do not register voters as having potential for diluting minority voting strength and, therefore, as being subject to the preclearance procedures of Section 5. In extending the Act's coverage, Congress drew no distinction between units that conduct voter registration and those that do not.

The legislative history of the 1965 Act shows that, at that time, discrimination against blacks in voting occurred primarily during the registration process. Thus, where an entire state was not designated for coverage, Congress determined that the political unit which conducted voter registration should be subject to the Act. But as Congress and this Court have recognized, changes that may affect minority voting rights are not limited to those occurring during the registration process, and the Act should not be construed as requiring submissions only by entities that conduct registration. See, *e.g.*, *Georgia* v. *United States,* 411 U.S. 526 (reapportionment); *Perkins* v. *Matthews,* 400 U.S. 379 (annexations); *Allen* v. *State Board of Elections,* 393 U.S. 544 (requirements for candidates; requirement that county superintendent be appointed, rather than elected; method of electing

officials; and use of write-in votes). Indeed, *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 320, involved the enforceability of an extension of the closing hour at polling places.

The district court's construction would enable cities within covered states to dilute the voting rights of minorities by such devices as redistricting, annexations and at-large or multi-member elections, even though the use of these devices by local governments was a major reason for adoption and extension of the Act's preclearance requirements.

2. The Attorney General's decision to interpose no objection to the holding of Sheffield's referendum did not constitute clearance under Section 5 of a new method of electing city councilmen. Sheffield's submission related only to the referendum itself, and the Attorney General warned the City that resulting changes in its structure of government would also require preclearance. Moreover, at the time of the submission, Sheffield had not yet indicated the detailed changes that would take place under the new form of government.

ARGUMENT

I. VOTING CHANGES ENACTED BY CITIES WITHIN COVERED STATES ARE SUBJECT TO THE PRECLEARANCE REQUIREMENTS OF SECTION 5

A. THE STATUTORY SCHEME

The district court's conclusion that the City of Sheffield is not subject to the preclearance requirements of Section 5 is based upon a narrow construc-

tion of that section, contrary to this Court's admonition that Section 5 is to be given "the broadest possible scope," *Allen* v. *State Board of Elections,* 393 U.S. 544, 567; *Perkins* v. *Matthews,* 400 U.S. 379, 387. It is true that Sheffield is not a "political subdivision" within the meaning of Section 14. But, as the use of the disjunction indicates, designations under Section 4 are made of states *or* political subdivisions. Only when an entire state is not designated does the definition of "political subdivison" in Section 14 become relevant. Section 14 does not stand isolated from the rest of the Act. Cf. *Allen* v. *State Board of Elections, supra,* 393 U.S. at 558. The language of other sections of the Act, its structure and its purpose, show that Section 5's scope is not limited merely to voting changes enacted *by* states or "political subdivisions", but includes all changes enacted *within* a state or within a political subdivison which has been designated under Section 4(b).

1. The language of the Act

The statute, read as a whole, supports the view that enactments by all component political units of a covered state or political subdivision are subject to the provisions of the statute. Section 4(a) specifies that "no citizen shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device *in* any State" which is covered by Section 4(b) (emphasis added). And Section 4(b) states that the statutory protections "apply *in* any State or *in* any political subdivision of

a State" which is covered by that section (emphasis added). In short, if a state has been designated under Section 4, all governmental entities in that state, including counties, cities, and other bodies, whether or not they register voters, are within Section 4's coverage.[7] Indeed, the district court recognized that

[7] A number of federal district courts have required that Section 5 procedures be satisfied when non-registering municipalities and other units located within covered states enact voting changes. See, *e.g.*, *White* v. *Dougherty County Board of Education*, 431 F. Supp. 919 (M.D. Ga.) (three-judge court) (Board of Education rule affecting candidates for public office); *Darden* v. *City of Hueytown*, N.D. Ala., No. 76-P-1126-S, decided August 30, 1976 (three-judge court) (annexation); *Gaillard* v. *Young*, D. S.C., No. 74-1265, decided March 21, 1975 (reapportionment of Charleston City Council); *Woodard* v. *Lanier*, N.D. Ala., No. CA 74-H-752-S, decided October 22, 1974 (annexations by City of Bessemer); *Jackson* v. *Land*, W.D. La., No. 15,845, decided June 16, 1972 (annexation by Town of Lake Providence).

The question whether voting changes enacted by Texas cities and school districts are subject to Section 5 preclearance is pending before four district courts in Texas. Six lawsuits raising this question have been consolidated before a three-judge court in Dallas. *Hereford Independent School District* v. *Bell*, No. 2-77-14 (N.D. Tex.); *Gomez* v. *Galloway*, No. 76-C-146 (S.D. Tex.); *United States* v. *Trinity Independent School District*, No. H-77-487 (S.D. Tex.); *United States* v. *Hawkins Independent School District*, No. TY-77-81 (E.D. Tex.); *United States* v. *Midland Independent School District*, MO-77-17 (W.D. Tex.); *United States* v. *Board of Trustees of the Chapel Hill Independent School District*, No. TY-77-137-C.A. (E.D. Tex.). Separate lawsuits were also initiated alleging that voting changes enacted by the Westheimer Independent School District had not met the preclearance requirements of Section 5. *Coalition to Preserve Houston* v. *Westheimer Independent School District*, No. 77-H-92 (S.D. Texas); *United States* v. *Westheimer Independent School District*, No. 77-H-121 (S.D. Tex.).

In *Chapel Hill*, *Midland* and *Hawkins*, the school districts notified the Attorney General that in light of the *Sheffield* decision,

if a state is designated, "political subdivisions" within that state, as defined in Section 14(c)(2), are automatically covered (J.S. App. B, p. 6a; J.S. App. C, p. 13a).[8] This automatic coverage does not depend on designation of the political subdivision by the Attorney General and Director of the Census pursuant to Section 4(b). There is little sense in holding, as the district court does, that, while designation of a state automatically subjects political subdivisions to Section 5 notwithstanding the failure to designate them separately under Section 4, the same designation cannot subject cities such as Sheffield to Section 5 because they cannot be separately designated under Section 4. Indeed, it is precisely *because* Sheffield is not a "polit-

they would not heed his Section 5 objections. The Attorney General brought suit to enjoin implementation of the voting changes absent Section 5 preclearance. The single-judge court dismissed *Gomez* v. *Galloway*, *supra*, and, in reliance upon that order, similar orders were entered in *Hereford Independent School District*, *supra*, and *Coalition to Preserve Houston* v. *Westheimer Independent School District*, *supra*. However, the court of appeals reversed the dismissal in *Gomez* and ordered the convening of a three-judge court, C.A. 5, No. 77-1344, decided March 11, 1977. The district court in *Hereford Independent School District*, *supra*, then ordered its dismissal order held in abeyance pending the convening of a three-judge court. On appeal, *Coalition to Preserve Houston*, *supra*, No. 77-1320 (C.A. 5), was remanded on June 6, 1977, and that case has been consolidated with *United States* v. *Westheimer Independent School District*, *supra*.

[8] The legislative history of the 1965 Act requires this conclusion. Both the House and Senate Committee Reports specifically stated: "Where an entire State falls within this subsection [*i.e.*, Section 4(b)], so does each and every political subdivision within that State." H.R. Rep. No. 439, 89th Cong., 1st Sess. p. 23 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, p. 23 (1965).

ical subdivision" as defined in Section 14(c)(2) that it cannot be separately designated under Section 4. Nor can any city or other entity that does not register voters (even in a non-covered state) be separately designated. Unless Sheffield is covered by the designation of Alabama, therefore, it can never be covered and thus may carry out whatever voting changes it desires, consistent with state law, without regard to the protections afforded by Section 5.

2. The need for uniformity of coverage

Because the scope of Section 5 depends on Section 4, it follows that clearance is necessary for voting changes *within* a covered state, not necessarily enacted by that state itself, and (in non-covered states) for changes within a designated political subdivision, not necessarily enacted by that subdivision itself. Any other construction would mean that the coverage of Section 5 would vary arbitrarily from state to state. Were Sheffield in Georgia, for example, the change involved in this case could be accomplished only by state legislative enactment[9] and thus would unquestionably require Section 5 scrutiny. *Allen* v. *State Board of Elections, supra.*

By contrast, under the district court's analysis in this case, Sheffield would be at liberty to change the location of its polling places without preclearance because Alabama law permits cities to do so.[10] But, as

[9] Code of Ga. Ann., § 69–1018(a)(1) (1976).

[10] Title 37, § 34(24), Code of Ala. (Cum. Supp. 1973).

this Court held in *Perkins* v. *Matthews,* 400 U.S. 379, 388:

> [T]here inheres in the determination of the location of polling places an obvious potential for 'denying or abridging the right to vote on account of race or color.' [citing Section 5] * * * Consequently, we think it clear that § 5 requires prior submission of any changes in the location of polling places.

In effect, then, the district court's decision would allow a city in Alabama to do that which this Court has held a city in Mississippi may not do. Such a departure from this Court's decisions cannot be justified on any considerations of what constitutes a "political subdivision," since the City of Canton, Mississippi, involved in *Perkins,* is no more a "political subdivision" than the City of Sheffield.[11]

Because no two covered states are likely to delegate responsibility for the myriad duties of local government in the same way, there are any number of

[11] Although cities in Mississippi conduct voter registration, Miss. Code, § 21–11–3 (1972), they are not "political subdivisions" within the meaning of Section 14(c)(2) because counties in Mississippi also conduct voter registration, Miss. Code, §§ 23–5–1, 23–5–9. Since cities are political subdivisions under Section 14(c)(2) only if the counties in which they are located do *not* conduct voter registration, Mississippi cities are not "political subdivisions" under Section 14(c)(2). Moreover, nothing in this Court's opinion in *Perkins* suggests that voter registration was a prerequisite to the Court's conclusion that Section 5 applied to Mississippi cities. Indeed, this aspect of the definition of "political subdivision" in Section 14(c)(2) further illustrates the limited function of that definition in the scheme of the Act.

changes in which "there inheres * * * an obvious potential" for discrimination but which, under the district court's rationale, would be subject to scrutiny in some states and immune from scrutiny in others. The scope of federal vigilance over the "extraordinary strategem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination" (*South Carolina* v. *Katzenbach,* 383 U.S. 301, 335) should not depend on the manner of the state's delegation of the authority which, if abused, can lead to voting discrimination. Yet the district court's decision would limit Section 5 in precisely that way. Indeed, under that court's decision, covered states could delegate significant authority to cities such as Sheffield in the knowledge that the cities' exercise of that authority would be beyond Section 5 scrutiny. Section 5, one of the Attorney General's "potent weapons against the evil" of voting discrimination (*South Carolina* v. *Katzenbach, supra,* 383 U.S. at 337), should not be so easily defused.

3. The statutory purpose

The decision below, moreover, is inconsistent with the approach of ths Court in *Allen* v. *State Board of Elections, supra,* 393 U.S. at 557–560. *Allen* held that Section 14(b)'s provision that "[n]o court other than the District Court for the District of Columbia * * * shall have jurisdiction to issue any declaratory judgment pursuant to" Section 5 does not apply to suits brought by private litigants seeking a declaratory judgment that a state's action was subject to

Section 5's preclearance requirement. The Court concluded that, despite what appeared to be an unqualified proviso, the congressional intent and the purpose of the Act as a whole would not be served by denying private litigants the right to bring such a suit in their own district. The relationship between Sections 5 and 14, therefore, requires, in light of the remedial purposes of the Voting Rights Act, a broader construction than the district court adopted.

In spite of "Congress' firm intention to rid the country of racial discrimination in voting" (*South Carolina* v. *Katzenbach, supra,* 383 U.S. at 315), the district court's cramped construction of the Voting Rights Act would attribute to Congress an intent to subject to Section 5 preclearance only those voting changes enacted by a state or by a political subdivision which conducts voter registration. But, as this Court has recognized, enactments by cities or other units which are not "political subdivisions" within the meaning of Section 14(c)(2) can be as pernicious as state-enacted measures in diluting the voting rights of minorities, *Perkins* v. *Matthews, supra,* 400 U.S. at 388–389, and the Act should be read to reach them.

The Voting Rights Act was enacted to enforce the Fifteenth Amendment, *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 324–327, which prohibits "any *State*" from denying or abridging the right of citizens to vote on account of race or color. The provision of Section 5 making preclearance a requirement for any voting changes "*in* any State" should therefore be

read to encompass all changes by any instrument of a state, for, just as the Court has applied the Fourteenth Amendment to cities and other governmental bodies (see, *e.g.*, *Hunter* v. *Erickson*, 393 U.S. 385; *Evans* v. *Newton*, 382 U.S. 296; *Yick Wo* v. *Hopkins*, 118 U.S. 356), so, too, does the Fifteenth Amendment prohibit discrimination by governmental units other than the state itself (*Terry* v. *Adams*, 345 U.S. 461, 467 (opinion of Black, J.); *United States* v. *Raines*, 362 U.S.C. 17).

Under Alabama law, "[m]unicipalities are but subordinate departments of state government." They are "created by sovereign power in accordance with sovereign will, and * * * [may] exercis[e] such power, and only such power as is conferred on [them] by law." *Alexander* v. *State*, 274 Ala. 441, 443 (Sup. Ct.). Accordingly, the constitutional prohibitions are as applicable to enactments of Alabama cities as they are to enactments of the Alabama legislature, and commensurate application of the protections of the Voting Rights Act is required if those protections are to achieve their important purpose.

B. THE LEGISLATIVE HISTORY OF THE 1965 ACT[12]

In considering the Voting Rights Act, Congress was particularly familiar with abuse of the registra-

[12] "In these cases [concerning Section 5 of the Act], as in so many others that come before us, we are called upon to determine the applicability of a statute where the language of the statute does not make crystal clear its intended scope. In all such cases we are compelled to resort to the legislative history to determine whether, in light of the articulated purposes of the legislation, Congress intended that the statute apply to the particular cases in question." *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 570.

tion process, and it added the "political subdivision" definition to Section 14(c)(2) because the Director of the Census ordinarily did not gather registration statistics beyond the county level, such as from cities or precincts. In non-covered states, therefore, the smallest political unit that could reliably be identified as having less than fifty percent registration (see Section 4(b)), was the county (or other voter-registering unit). That is not to say that Congress intended the Act itself to reach only to the county level. Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., pp. 331–334 (1965) (hereinafter cited as "1965 House Hearings").[13]

But Congress did not intend to prohibit only registration abuses or, indeed, only those tools of discrimination that were in use in 1965. It was well aware that "an insidious and pervasive evil * * * had been

[13] At the time of the passage of the Voting Rights Act in 1965, the registration process was frequently used as a means of denying blacks the right to vote. The States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia enacted tests beginning in 1890 which were still in effect at the time of the 1965 Act and which were specifically designed to prevent blacks from voting. The most common was the literacy test. Other means, including grandfather clauses, property qualifications, character tests and tests requiring interpretation of constitutional or statutory passages were also employed to deny the franchise to blacks. See *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 310–313; H.R. Rep. No. 439, 89th Cong., 1st Sess., pp. 11–13 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 4–5, 9–12 (1965). See also 111 Cong. Rec. 10727 (1965) (remarks of Sen. Tydings); 111 Cong. Rec. 8297 (1965) (remarks of Sen. Mansfield).

perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution" and it "marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively." *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 309, 337. A variety of means had been used to deprive blacks of the right to vote, including the white primary and racial gerrymandering, *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 311, and the Voting Rights Act was designed to reach these devices as well as new devices which might in the future be used as tools of racial discrimination. "Congress deliberately used broad language so as to bring under federal scrutiny the many different means by which jurisdictions in the areas covered by the Act might seek to evade the requirements of the Fifteenth Amendment." *City of Petersburg* v. *United States,* 354 F. Supp. 1021, 1030 (D. D.C.), affirmed, 410 U.S. 962.

The district court's construction of the Act would enable cities within covered states to dilute the voting rights of minorities by such devices as redistricting, at-large and multimember elections, and annexations, contrary to this Court's consistent warnings that such devices are subject to scrutiny under the Act. See, *e.g., Perkins* v. *Matthews, supra* (annexations); *Allen* v. *State Board of Elections, supra* (use of at-large elections; requirements for candidates; requirement that officials be appointed, rather than elected; and use of write-in votes); *Georgia* v. *United States,*

411 U.S. 526 (reapportionment). Changes that may affect minority voting rights are not limited to those occurring during the registration process, and the Act therefore should not be construed as requiring submission only by entities that conduct registration.

Nothing in the history of the Act supports the holding below that despite the designation of an entire state, Congress intended to exclude from Section 5 scrutiny voting changes in cities or other governmental units within such states simply because those units do not conduct voter registration. The legislative history indicates quite the contrary understanding. For example, in proposing an amendment which would have stricken Section 5, Senator Talmadge objected that Section 5 requires preclearance for precisely the type of city action at issue here (111 Cong. Rec. 10729 (1965)):

> The language in the pending bill is so phrased that it would relate to any voting qualifications or prerequisite to voting, standard practice or procedure. No matter what kind of legislation might be involved, whether it be from a city council, a resolution of the county commissioners, or an act of the legislature of the States affected, they would have to come to Washington, D.C., and beg the Attorney General to allow them to implement their own legislation * * *.
>
> * * * * *
>
> * * * If the officials of the town of McDonough * * * decided to change the date on

> which to hold a mayor's election, [or] * * * [i]f a municipality in Georgia desired to hold an election relating to sewage bonds, it would have to come all the way to Washington, D.C., to obtain the approval of the Attorney General and of the District Court for the District of Columbia. * * * [14]
>
> * * * * *
>
> * * * This is so far-fetched that if the city of Atlanta wished to hold a referendum to determine whether it would have a mayor-type city government or a city manager city government, and it enacted a law in its council and petitioned the general assembly to that effect, before it could go into effect, it would have to come to Washington to obtain the approval of the Attorney General and the District Court of the District of Columbia before it could implement it. * * * [15]

[14] Appellees have erroneously asserted that in 1965, Georgia cities were political subdivisions within the meaning of the Act (Motion to Affirm, p. 10). Under Georgia law at the time of the passage of the Voting Rights Act, counties conducted voter registration (Code of Ga. Ann., §§ 34–603 to 34–613 (1970)), and cities had the option of conducting their own registration for municipal elections or using the county registration system (Code of Ga. Ann., §§ 34A–502 to 34A–507 (1970)). Thus, as in Mississippi, see n. 11, p. 17, *supra*, Georgia cities were not "political subdivisions" within the meaning of the Voting Rights Act. This dual registration system was retained in subsequent amendments to the election laws (Georgia Laws: Acts of 1968, pp. 871, 873, 885, 899; Acts of 1969, pp. 285, 287; Acts of 1971, Extra Sess., pp. 61, 65, 66, 270; Acts of 1974, pp. 82, 83; Acts of 1975, p. 803; Acts of 1976, pp. 457, 468).

[15] Although this is a statement of an opponent of the bill, it is nevertheless relevant, particularly since the proponents did not disagree with the opponent's analysis. *Arizona* v. *California*, 373 U.S. 546, 583, n. 85. Indeed, this Court has previously noted Senator Talmadge's remarks in considering the scope of Section 5. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 568 n. 32.

The Senate Majority Report in 1965 also recognized that designation of a state under Section 4 would result in the coverage of political units within that state (S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, p. 16 (1965)) (emphases added):

> We are also of the view that an entire State covered by the test and device prohibition of section 4 must be able to lift the prohibition *if any part of it is to be relieved from the requirements of section 4.* The statewide ban is a prophylactic measure grounded on the probability of future discrimination *throughout the State* even if it may not now exist in some areas. * * *

Section 4(a) provides that the Act applies to local elections, as well as those conducted at the federal and state level. As Congressman Goodell, quoting from President Johnson's address concerning the voting rights bill, stated, "This bill will strike down restrictions to voting in all elections—Federal, State and local—which have been used to deny Negroes the right to vote." 111 Cong. Rec. 5361 (1965). That the framers of the Voting Rights Act had no intention of enfranchising a citizen for one election but not for another is evident from an exchange between Attorney General Katzenbach and Chairman Celler of the House Judiciary Committee, in which the Attorney General testified that the bill would apply to every

election in a covered state (1965 House Hearings, at p. 21):

> The CHAIRMAN. This bill covers Federal, State, and municipal elections. Would it cover an election for a school bond?
>
> Mr. KATZENBACH. Yes; it would, Mr. Chairman. Every election in which registered electors are permitted to vote would be covered by this bill.

In sum,

> Both the language and the legislative history of the Voting Rights Act of 1965 make it clear that the burden of proof placed on the plaintiff state or political subdivision of the Act [to remove itself from coverage] involves a showing of nondiscrimination not only in county, state, and national elections, *but also in township and municipal elections, and in every other election within the state or political subdivision.* [Emphasis added.]

Gaston County v. *United States,* 288 F. Supp. 678, 691 (D. D.C.) (Gasch, J. concurring), affirmed, 395 U.S. 285.

C. THE ATTORNEY GENERAL'S CONSTRUCTION OF THE ACT

True to the Act's structure and history, the Attorney General has consistently interpreted it as requiring cities within covered states to submit proposed changes under Section 5 regardless of whether such cities conduct voter registration. Between August 6, 1965, and May 1, 1977, the Attorney General received more than 8,100 proposed changes by non-voter registering political units within designated states (or designated political subdivisions) other than

counties or parishes, including not only cities but school, water, and public utility districts. In fact, proposed changes from such units comprise more than half of the proposed changes received. Among these are more than 700 changes from Alabama cities and other non-registering units (see n. 3, p. 5, *supra*). This contemporaneous administrative construction is significant evidence of the Act's meaning, especially in view of the Attorney General's role in drafting the statute.[16] See *Trafficante* v. *Metropolitan Life Insurance Co.,* 409 U.S. 205, 210.

As this Court held in *Perkins* v. *Matthews, supra,* 400 U.S. at 390–391, 393–394 (footnotes omitted):

> Our conclusion that both the location of the polling places and municipal boundary changes come within § 5 draws further support from the interpretation followed by the Attorney General in his administration of the statute. "[T]his Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965). The Attorney General's interpretation was recently reported by officials of the Department of Jus-

[16] See testimony of Attorney General Katzenbach, 1965 House Hearings at pp. 9 *et seq.* and testimony of Attorney General Katzenbach at the Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pp. 14 *et seq.* (1965). See also testimony of Assistant Attorney General J. Stanley Pottinger at the Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., p. 166 (1975) (hereinafter cited as "1975 House Hearings").

tice in testimony related to the extension of the 1965 Act. * * *

* * * Every change in boundary or election district lines as well as every change in polling places * * * was considered by the Department to be within the scope of § 5. * * *

D. THE LEGISLATIVE HISTORY OF THE 1970 AND 1975 EXTENSIONS OF THE ACT

Although Congress has never explicitly addressed the issue presented in this appeal, in reenacting the statute in 1970 and again in 1975 it should be deemed to have approved the Attorney General's consistent interpretation described above. See Sec. C, *supra;* cf. *Commissioner* v. *Noel Estate,* 380 U.S. 678, 681–682. See also, *Georgia* v. *United States, supra,* 411 U.S. at 533. Indeed, numerous statements made in the course of the 1970 and 1975 reenactments show not only that Congress has never drawn a distinction between governmental entities that conduct voter registration and those that do not, for purposes of extending and amending the prohibitions of the Act, but that it has assumed that both categories are within the Act's coverage.

In enacting the 1975 amendments, both the House and Senate reports [17] cited, as evils to be remedied, examples of changes in voting laws by municipalities and school districts within the State of Texas which diluted minority voting strength. The Senate Report stated (pp. 27–28):

[17] S. Rep. No. 94–295, 94th Cong., 1st Sess., pp. 27–28 (1975); H.R. Rep. No. 94–196, 94th Cong., 1st Sess., pp. 19–20 (1975).

Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise the right to vote. The following communities have adopted such changes in the face of growing minority voting strength: Corpus Christi, Lufkin and Waco, in addition to a number of local school districts throughout the state. * * *

The at-large structure, with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas. And under state statute, the countless school districts in Texas elect at-large with an option to adopt the majority run-off, numbered place system. These structures effectively deny Mexican American and black voters in Texas political access in terms of recruitment, nomination, election, and ultimately, representation.

An identical conclusion was reached in the House Report, pp. 19–20, and the testimony from which these examples were drawn specifically noted that "[u]nder the provisions of Section 5 of the Voting Rights Act, all of these changes in electoral arrangements would have to meet preclearance through the Attorney General." [18] Under Texas law, counties conduct voter registration,[19] and thus the cities and school

[18] Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 490 (statement of Dr. Charles L. Cotrell, Professor of Political Science at St. Mary's University in San Antonio, Texas) (1975) (hereinafter cited as 1975 Senate Hearings).

[19] See Vernon's Ann. Tex. Stat. (Election Code), Art. 5.09a (1967); Art. 5.13a (1976).

districts in that state that Congress intended the 1975 amendments to reach are no more "political subdivisions" under Section 14(c)(2) than is the City of Sheffield.

The House and Senate hearings on the 1975 extension of the Voting Rights Act also show the importance attached by proponents of the bill to protecting the right of minority voters to participate at all levels of government. The following dialogue between Senator Tunney and Dr. Cotrell is illustrative (1975 Senate Hearings, at pp. 463–464):

> Senator TUNNEY. * * * [Y]ou are saying that section 5 coverage is absolutely essential to guarantee that the Spanish-speaking citizens in various locations in Texas have an opportunity to participate, not only in voting for the Government, the U.S. Senate, but have a voice also as it relates to water districts and other levels of legislative responsibility which can have a tremendous impact, economic and otherwise, on the lives of those citizens in Texas; and that the discrimination they suffer will occur in these local elections, perhaps even more subtle than in elections for Governor or President or U.S. Senator; is that correct?
>
> Mr. COTRELL. * * * The election of city officials and school board officials is of as vital concern to the citizens, as is the election of U.S. Senators and U.S. Congressmen. And it is in these areas especially, the large concentrations of minorities in the cities, as well as those basically isolated from urban rhythms in east Texas and south Texas, that we must be especially careful to protect and otherwise guarantee voting rights to minority citizens.

Dr. Cotrell's testimony further indicates the importance attached to Section 5 review of voting changes by cities, school districts and public utility districts (1975 Senate Hearings, at p. 462):[20]

> * * * [I]n at least 1,300 political subdivisions [in Texas] the at-large structure is in fact used. If you include such invisible but important areas such as water districts and river authorities, you increase that 1,300. It [illegible]s down basically to something like this. All of the 1,100-plus school districts in Texas are elected at large; 174 of the large cities in the State of Texas elect at large as opposed to 4 with smaller populations, which have single member districts. All cities in the large population areas of the State of Texas include significant proportions of minority population, and all hold at-large city council and school board elections. * * *
>
> The upshot is this, if section 5 of the Voting Rights Act applied to the State of Texas, when the various election rule changes, which have been shown to this subcommittee, were made, the Attorney General would clearly have objected. * * *

[20] See also 1975 Senate Hearings, at p. 16 (statement by Senator Hart that election law changes requiring federal scrutiny include "such tactics as making councilmanic seats at large instead of by district") and 1975 Senate Hearings at p. 234 (statement by Congresswoman Jordan citing the at-large procedures in various Texas cities as a reason for extending the Section 5 preclearance requirements to the State of Texas).

> Bluntly stated, what I would like to say in summary is this, if the Voting Rights Act were extended and expanded to Texas, section 5 would be one of the most important portions of that act because these changes would then have to go through a preclearance formula before the Attorney General. It makes a lot of difference.

The legislative history of the 1975 amendments also contains extensive evidence that Congress was aware of, and agreed with, the Attorney General's construction of the Act as applying to all units of government within covered states. In describing the Attorney General's enforcement of Section 5, Assistant Attorney General J. Stanley Pottinger stated that submissions had been received from the state, county and city level,[21] and he submitted to Congress an extensive exhibit listing Section 5 objections interposed by the Attorney General, including those relating to changes proposed by cities within covered states.[22]

In recounting the history of the enforcement of Section 5, Arthur S. Flemming, Chairman of the United States Commission on Civil Rights, stated (1975 House Hearings, at pp. 40–41):

> Section 5 objections have been entered to changes in voting laws, practices, and procedures that affect every stage of the political process. For example, there have been objections to changes such as annexation of white population to offset the growth of black population in a city; relocation of polling places to sites that inconvenience or otherwise discriminate against minority voters; abolition of offices to which minorities might be elected; converting elective offices into appointive ones to avoid the election of minorities; and imposition of burdensome filing fees. By far the greatest use of section 5 has been to block potentially discriminatory changes in district boundaries, local methods of election, and other voting rules.
>
> * * * * *
>
> * * * [T]he Attorney General objected repeatedly in 1973 and 1974 to changes submitted by Georgia towns involving the use of staggered terms, majority requirements, and numbered posts.[23] That jurisdictions continue to institute changes to which the Attorney General and the courts have often objected is clear institute changes to which the Attorney General tions offered by section 5 and the Voting Rights Act.[24]

[21] 1975 House Hearings, at p. 170.

[22] *Id.* at pp. 183–184. See also Mr. Pottinger's letter to the City of Grenada, Mississippi, interposing an objection to an annexation by that city. *Id.* at 194–195.

[23] As noted (see n. 14, p. 24, *supra*), towns in Georgia are not "political subdivisions" within the meaning of Section 14(c)(2) of the Voting Rights Act, because counties in Georgia also conduct voter registration.

[24] See also the statement of Howard A. Glickstein, Director of the Notre Dame Center for Civil Rights (1975 House Hearings at p. 332), describing the City of Bessemer, Alabama, as a "covered jurisdiction" in which Section 5 had had a deterrent effect; and the testimony of Armand Derfner of the Lawyers' Committee for Civil Rights under law (*id.* at 631–632) describing the lengthy process of Section 5 preclearance for Charleston, South Carolina's

Not only was Congress aware of the Attorney General's construction of the Act; it intended that the Act continue to be enforced as previously construed. For example, Congressman Rodino summarized the findings of the Judiciary Committee (121 Cong. Rec. H4710 (daily ed. June 2, 1975)) (emphases added):

> * * * [I]n reviewing the continued need for this legislation in those jurisdictions soon eligible for release, we concluded that the act's Federal preclearance requirements, mandating Federal review of all voting changes to be implemented *in covered jurisdictions,* were still needed because of the recent increase in the number of Justice Department objections to potentially discriminatory changes. In other words, in recent years the Justice Department, under the preclearance provision, has halted by means of objections proposed changes in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia, each of which will soon be eligible for exemption from the act unless we act and act quickly. *Those objections have prohibited, in those jurisdictions, discriminatory annexations, redistricting, polling place changes, switches to at-large elections, and other devices which would have adversely affected minority political par-*

redistricting of the city council, and "[t]he change that is going to come in Charleston this year [which] mirrors the change that has come about in the South Carolina house, and in other places where section 5 has been fully effective." In South Carolina, cities do not conduct voter registration. See Code of Laws of South Carolina, §§ 7-5-10, 7-5-30, 7-5-610 to 7-5-630 (1976).

> *ticipation.* The committee found, and I personally suggest to you, that it would simply be unthinkable to now remove the preclearance protections when such changes have been prevented by the Justice Department as recently as 1974 and 1975.

See also *id.* at H4714–H4715 (remarks of Congressman Edwards).

None of the critics of the 1975 legislation took issue with the common assumption that Section 5 applied to all voting changes within covered states. Indeed, they apparently shared this assumption. For example, Senator Allen of Alabama argued (121 Cong. Rec. S13331 (daily ed. July 22, 1975)):

> What I do object to is the fact that every time we pass a law at the State level or an ordinance at the city level or a resolution at the county level that has, by any stretch of the imagination—a wide stretch of the imagination, I might say—anything to do with the voting rights or in the way of voting, it has to be approved either by the Attorney General here in Washington or by the Federal district court for the District of Columbia.

Similarly, Senator Stennis of Mississippi described the scope of Section 5 as follows (121 Cong. Rec. S13072 (daily ed. July 21, 1975)):

> Any [voting] changes * * * which were made in precincts, county districts, school districts, municipalities, or state legislatures, or any other kind of officers, had to be submitted here to the Attorney General for his approval.

Five years earlier, during the consideration of the 1970 extension of the Voting Rights Act (Pub. L. 91–285, 84 Stat. 315), the failure of the City of Anniston, Alabama, to obtain preclearance of a change in its electoral system was brought to the attention of Congress, and members of the Senate cited the Anniston situation as a reason for the retention of Section 5.[25] Anniston, like Sheffield, does not conduct voter registration.

Congress in 1970 was also cognizant of this Court's interpretation of the Act as reaching voting changes other than those affecting the registration process (116 Cong. Rec. 5546 (1970)) (remarks of Senator Ervin):

> The scope of authority of section 5 has been vastly increased by a recent Supreme Court decision, *Allen* v. *State Board of Elections,* 393 U.S. 544 (1969). In that case the Supreme Court defined the act's language—"any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting"—to include "any State enactment which altered the election law of a covered State in even a minor way." (393 U.S. 544). The Court determined that, among other changes, a change in the method of selecting a county official, from election to appointment, had to be submitted to the Attorney General. Changes in city limits, candidate filing fees, times during which polling

[25] Joint View of 10 Members of the Senate Judiciary Committee Relating to the Extension of the Voting Rights Act of 1965, 116 Cong. Rec. 5521 (1970).

> places are open for voting, and any other State or county law or rule in any way connected with voting must be approved by a Federal court in the District of Columbia or an officer of the U.S. Government * * *.

The district court's decision thus is contrary not only to the language and structure of the Act, but also to the Attorney General's consistent course of interpretation of and practice under the Act, and to the legislative history of the Act and its amendments adopted in light of that interpretation and practice.

II. THE ATTORNEY GENERAL DID NOT GIVE PRECLEARANCE TO THE METHOD OF ELECTING COUNCILMEN

If, as we have shown, Section 5 applies, the Attorney General's decision to interpose no objection to the holding of Sheffield's referendum did not constitute clearance under Section 5 of the method of electing city councilmen. In its submission to the Attorney General, Sheffield sought preclearance only for holding the referendum; it did not seek approval for the changes in its form of government which were to be effectuated if the referendum passed. See pp. 5–6, *supra.* Moreover, at the time the Attorney General decided not to object to the referendum (which, in the meantime, had already been held), he warned that any such change would itself require preclearance (p. 6, *supra*). This warning simply reflected the fact that the City had not yet revealed the detailed changes that would take place under the proposed new form of government.

For example, there was some indication that wards as they had existed in 1912 would be restored although ward boundaries were yet to be drawn when the referendum took place (pp. 5–6, *supra*). Under the pertinent regulations, the Attorney General considers a voting change prior to a referendum relating to that change only if "all other action necessary for adoption has been taken." 28 C.F.R. 51.7. In Sheffield, such action had not yet been taken prior to the referendum. Indeed, after the referendum there followed an extensive correspondence between the City and the Attorney General concerning the detailed nature of the change, and its effect on the City's substantial black population (pp. 6–7, *supra*).

In these circumstances, the new form of city government was not before the Attorney General for clearance until the final plan for electing the council from defined wards was adopted and submitted by the city government. The district court thus erred in holding that the Attorney General's decision not to object to the referendum foreclosed any objections to the changes the referendum authorized.

CONCLUSION

The judgment of the district court should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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IN THE

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OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA,

Appellant,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

BRIEF OF BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

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FOR THE NORTHERN DISTRICT OF ALABAMA

BRIEF OF BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

QUESTIONS PRESENTED

1. Whether a city in Alabama changing its form of government, which city does not conduct registration for voting, must request and receive preclearance for such change under Section 5 of the Voting Rights Act of 1965 before such change may become legally effective.

2. If so, whether the Attorney General's decision to interpose no objection to the holding a referendum on

changing from a commission to a mayor-council form of government constituted clearance of the at-large election of city councilmen under the new form.

STATEMENT

This is a direct appeal from the final judgment and decree entered on December 13, 1976, by a district court of three judges specially constituted pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284, denying appellant's application for an injunction to enjoin a city election in Sheffield, Alabama, on August 10, 1976, and dismissing appellant's complaint.

This litigation concerns an election of a mayor, president of the city council and eight councilmen under a mayor-council form of government in Sheffield, Alabama. Sheffield is a small town with a population of approximately 13,000. It is located in Colbert County, Alabama, and the county fully handles the registration of all voters in the county, including voters in Sheffield. This is done through the County Board of Registrars which is in accordance with the state law of Alabama. Sheffield does not register voters.

The town was incorporated in 1885 by the Alabama Legislature under a mayor-council form of government, and it retained this form of government until 1912 when the voters decided to change to a commission form of government. Three commissioners were elected from the town at large. The commission form of government was continually in effect from 1912 until August 10, 1976, when the town returned to a mayor-council government as the result of a special referendum conducted on May 13, 1975, in which a majority of the citizens voted in favor of changing the form of government.

Title 37 of the Code of Alabama contains the basic state statutes which govern the creation, organization and function-

ing of cities in the state of Alabama. Title 37 §426 Code of Alabama 1940 (Recomp. 1958) provides that in cities of 12,000 to 20,000 population with a mayor-council form of government, two aldermen are elected at large from each ward, and a mayor and president of the council are likewise elected at large. The most recent federal census shows Sheffield's population as 13,115. Consequently, Sheffield was required by state law to elect its council members at large. Pursuant to the provisions of Alabama law following the referendum on May 13, 1975, the town was divided into four wards of near equal population as follows:

Ward	*Population*	*Black*	*White*
1	3,307	50	3,257
2	3,245	2,222	1,023
3	3,188	254	2,934
4	3,375	0	3,375
Total	13,115	2,526	10,589

From these figures it is noted that only 19 percent of the city population is black. Black citizens have historically voted in the city, and there was no substantial increase in the number of registered black voters in the city following the adoption of the Voting Rights Act.

It is also noteworthy that during the history of Sheffield, no black citizen had ever been a candidate for public office until the town decided to return to the mayor-council form of government, and held its election on August 10, 1976. Four black citizens qualified to run for council seats. In one race a black candidate received 47 percent of the total vote cast (black citizens compose only 19 percent of the total population of Sheffield) although he lost. In a separate race a black candidate was in a run-off against a white candidate, and the black candidate won the election. Sheffield has always enjoyed an excellent relationship between its white and black citizens, and was one of the first, and possibly the first, town in Alabama to integrate its school system which it

did voluntarily several years prior to the majority of other towns and prior to the advent of the Voting Rights Act. Black citizens participate fully in the governmental process in Sheffield and have representatives on or in most all boards and departments.

By letter of March 20, 1975, the city advised the Attorney General of the United States of the proposed referendum for a change in the form of government. The city did not feel that the Voting Rights Act applied, but the letter was written out of an abundance of precaution, and this was so stated in the letter. The Attorney General did not object at that time or any time prior to the referendum. It was not until May 23, 1975, ten days after the referendum, that the Attorney General next wrote, and even then he did not object to the referendum, but sought to retain the right to object any time in the future should he so desire.

Officials of the City of Sheffield were in telephone contact with attorneys in the Justice Department between March 20, 1975, and May 13, 1975, the date of the referendum, and were in frequent contact with the same attorneys from then until July 6, 1976, and at no time did the Justice Department indicate that it had any objections to Sheffield's change of government. There were only two letters received from the Justice Department after its letter of May 23, 1975, until the scheduled election on August 10, 1976. It was not until July 6, 1976, approximately 30 days prior to the election and after the town and candidates had gone to great expense, that the Attorney General advised the city as follows:

> "In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which

> we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights."

Under Alabama law, Sheffield was compelled to have its form of government changed pursuant to a referendum mandating the change, including the election of council members "at large," and the Attorney General's office was fully aware of this law even before the referendum was held on May 13, 1975. The municipal election was scheduled for August 10, 1976, in accordance with state law; the Attorney General filed suit to enjoin the election on August 9, 1976. After a hearing on the merits, the district court denied the injunction and dismissed appellant's complaint. The final order of the district court was entered on December 13, 1976.

SUMMARY OF ARGUMENT

1. The decision of the district court is plainly correct. The issues in this case are uniquely narrow, and no amount of strained semantics or legal gymnastics can convert it into a matter warranting reversal by this court, and the decision of the lower court should be affirmed.

The key determination to be made in this case is whether the Voting Rights Act of 1965 (hereinafter called the Act), 42 USCA 1973-1973p applies to the City of Sheffield, Alabama. We say that it does not. The Act must be read in its entirety in order to determine its meaning and coverage.

Section 2 of the Act, 42 USCA 1973, states the legislated proscription of the Act:

> "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or

> applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."

The Act is directed toward a "State or political subdivision." Section 14(c)(2) of the Act, 42 USCA 1973ℓ(c)(2) provides as follows:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

Therefore, it is obvious that the Act does not purport to apply to cities or other subdivisions of a state that do not conduct registration for voting.

The City of Sheffield is not a "political subdivision" within the above-stated definition in Section 14(c)(2). The City of Sheffield, as a municipal corporation under existing Alabama law, has no authority to supervise or conduct voting registration. The Alabama Legislature has specifically designated the County Boards of Registrars of the several counties solely and exclusively as the registrars of voters in this state. Title 17, §21, Code of Alabama (Recomp. 1958); see also Title 37, §34(34) Code of Alabama (Cum. Suppl. 1973).

Therefore, since in Alabama registration for voting is conducted under the supervision of the county, and only under the supervision of the county, then the City of Sheffield is not included within the definition of the term "political subdivision" found in Section 14 of the Act.

To reach this conclusion, no tortured construction of the statute is required. On the contrary, the application of well established rules of statutory interpretation directly supports this conclusion.

2. The lower court was of the further opinion, and the appellees feel rightfully so, that by approving the referendum to change the form of government that the Attorney General

in fact approved the change to the mayor-council form of government notwithstanding his caution to the town that the change also was subject to preclearance. Prior to his approval of the referendum, the Attorney General knew of the provision of Title 37 §426, Code of Alabama 1940 (Recomp. 1958) which provides for the "at large" election of council members. He knew that if the voters approved the change in form of government that the city would be obliged under state law to hold elections to elect a mayor, president of the city council and council members, all at large, and there was no way anyone could halt the election once it reached this stage. His approval of the referendum therefore was an implicit approval of the "at large" elections for the new government.

By approving the referendum, the Attorney General terminated his authority under the Act to continue to oversee the results of the "change" which he had already approved.

ARGUMENT

The decision of the district court is plainly correct. The issues in this case are uniquely narrow, and no amount of strained sémantics or legal gymnastics can convert it into a matter warranting reversal by this court, and the decision of the lower court should be affirmed.

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Therefore, it is obvious that the Act does not purport to apply to cities or other subdivisions of a state that do not conduct registration for voting.

Section 3 of the Act, 42 USCA 1973a establishes the Attorney General as the acting governmental authority to enforce the Act and establishes the scope of the power of the courts in proceeding under the Act. The court's powers as established by this section are threefold: (1) to authorize federal examiners in states or political subdivisions, (2) to suspend the use of discriminatory tests or devices in states or political subdivisions, and (3) to grant equitable relief against states or political subdivisions and retain jurisdiction for such period as the court may deem appropriate. During the period of the court's jurisdiction no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: provided, "that such qualification, prerequisite, standard, practice or procedure may be enforced if the qualification, prerequisite, standard, practice or procedure has been submitted by the chief legal

officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission. . . ."

Section 4 of the Act, 42 USCA 1973b establishes a procedure for designating certain states or political subdivisions that use discriminatory tests or devices to deny persons the right to vote.

Section 5 of the Act, 42 USCA 1973c provides the preclearance procedure for certain anticipated changes in voting practices by the states or political subdivisions designated in Section 4 of the Act. This section provides as follows:

> "Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 4(a) based upon determinations made under the first sentence of Section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure."

Thereafter Section 5 of the Act establishes a procedure similar to that heretofore quoted in Section 3 of the Act for submission of proposed changes in voting qualifications or prerequisite to voting or standards, practices, or procedures with respect to voting to the Attorney General for approval.

The remaining sections of the Act will not be detailed in this brief but cover the mechanics for its enforcement as well as certain miscellaneous provisions.

Manifestly, the City of Sheffield is not a "political subdivision" within the above-stated definition in Section 14(c)(2). The City of Sheffield, as a municipal corporation under existing Alabama law, has no authority to supervise or conduct voting registration. The Alabama Legislature has specifically designated the County Boards of Registrars of the several counties solely and exclusively as the registrars of voters in this state. Title 17, §21, Code of Alabama (Recomp. 1958); see also Title 37, §34(34) Code of Alabama (Cum. Suppl. 1973).

Therefore, since in Alabama registration for voting is conducted under the supervision of the county, and only under the supervision of the county, then the City of Sheffield is not included within the definition of the term "political subdivision" found in Section 14 of the Act.

To reach this conclusion, no tortured construction of the statute is required. On the contrary, the application of well established rules of statutory interpretation directly supports this conclusion.

This court has declared that "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470. This court further said that . . . "where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Id.* This rule is widely known as the plain meaning rule and is frequently encountered in judicial decisions. See *Sands, Sutherland Statutory Construction*, Sec. 46.01 (1973) and cases collected therein. Under this rule, if the statutory language is plain, unambiguous and uncontrolled by other parts of the Act or other acts upon the same subject, the court cannot give it a different meaning. Obviously, the statutory definitions control the meaning of

statutory words. The statutory language in Section 14 is straightforward; no attempt is made to define the term "political subdivision" in any other portion of the Act or in any other related act. Applying the plain meaning rule of statutory interpretation, the definition of political subdivision in the Act may not judicially be expanded to embrace the City of Sheffield.

In our case the Act is not ambiguous and the construction placed on the Act by the government is plainly erroneous.

The legislative history of Section 14 of the Act makes it clear that this section was intended as a restriction on the coverage of the Act.

> "Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State *which conducts registration for voting*. This definition makes clear that the term 'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting." *1965 U.S. Code Congressional and Administrative News*, p. 2569; see also p. 2464. (emphasis added)

H.R. 6400 was the voting rights bill drafted by the Department of Justice during the Johnson administration and was offered in the House of Representatives by Hon. Emanuel Celler, Chairman of Subcommittee No. 5 of the House Committee on Judiciary, 89th Cong. 1st Sess. At the hearings before said Subcommittee on said bill held in March of 1965, Hon. Nicholas Katzenbach, Attorney General of the United States, was the first witness, and it was his testimony that explained H.R. 6400 to the Subcommittee. "Political subdivisions" were not defined in H.R. 6400 as originally drafted and the questions to him showed what was the intended meaning by that phrase. This testimony resulted in a request

by Representative Tenzer that H.R. 6400 be amended to define the term "political subdivisions."

> "Mr. Tenzer. Thank you, Mr. Chairman. I just have one question. Since you agree to define in the law the term 'election,' would you also agree to define the term 'political subdivision', so there would be no question about that *as one that regularly maintains a system for registering voters?*
>
> Mr. Katzenbach. I think it might be a good idea to define political subdivision. I think the committee ought to consider giving it consideration." (p. 121) (emphasis added)

This amendment of H.R. 6400 took the form of Section 14(c)(2) of the Act. 42 U.S.C.A. §1973ℓ(c)(2). Also, it is important to note that Mr. Katzenbach's testimony shows absolutely no question on his part that the meaning of "political subdivisions" was to encompass those areas responsible for registering voters, and it was not intended to go any farther down the scale. In fact, Mr. Katzenbach acknowledged that he knew that "political subdivisions" only covered *counties* in Alabama. The Katzenbach-Subcommittee colloquy found in the transcript of the hearings before said Subcommittee is as follows;

> "The Chairman. The bill also refers to 'political subdivisions.' How far down the political scale does that go?
>
> Mr. Katzenbach. I believe that the term 'political subdivision' used in this bill is intended to cover the registration area and that the whole bill really is aimed at getting people registered.
>
> Mr. Chairman. For example, in New York we have what is called an assembly district where the representatives of the lower house of the State legislature are elected. Such assembly districts are then broken down into election districts. I take it that an election district would be deemed a political subdivision?

> Mr. Katzenbach. I think that is possible, Mr. Chairman, but, frankly, you are more familiar with how registration is accomplished in New York than I am. *I know how it is accomplished or not accomplished in Alabama.*
>
> Mr. Chairman. What would be the lowest possible political unit in the scale?
>
> Mr. Katzenbach. What is the area in which registration is done in New York? I am not familiar with that, Mr. Chairman.
>
> The Chairman. In New York, it is the so-called election district, but what would it be in some of the States that would be affected here?
>
> Mr. Katzenbach. Throughout the affected States, in the South, it is a county or parish under the present law; parish in Louisiana." (p. 21) (emphasis added)
>
> "Mr. McCulloch . . . If in the State of New York in 1964 there was a political subdivision where less than 50 percent of the people voted or were registered to vote, wouldn't that trigger this bill in that political subdivision in the State of New York?
>
> Mr. Katzenbach. I think it could, Congressman. I think the only way in which we can gather valid statistics here is really—we are aiming at voter registration and *I think the term 'political subdivision' is used here aimed primarily at the area in which the registration process takes place.*" (p. 51) (emphasis added)
>
> "Mr. Rogers. Section 4(a), provided that when the Attorney General certifies that he has received the complaints in writing from 20 or more residents of a political subdivision * * * what do you interpret as a political subdivision in that case?
>
> Mr. Katzenbach. I believe the political subdivision there means the same thing as it means in Section 3, Congressman." (p. 53)
>
> "Mr. Cramer. In every city or political subdivision in every county?

Mr. Katzenbach. *Political subdivision, as I attempted to say, in my judgment means that area for which people are registered and within which a registrar board operates. It is called different names in different States.* That is the reason for using the term 'political subdivision,' but it is meant to be coincidental with the area under the supervision of a board of registration or election." (p. 78) (emphasis added)

"Mr. Gilbert . . . Mr. Attorney General, I don't wish to belabor the point, about political subdivision, but in the State of New York there is a problem which would concern political subdivisions and I would like to have a definite statement from you on political subdivisions.

Mr. Katzenbach. All right Congressman, I'll be happy to provide that.

Mr. Gilbert. I wonder if we could have it on the record today, or would you prefer to provide that at a later date?

Mr. Katzenbach. I attempted to make my general statement as to what a political subdivision is but I cannot apply that to New York without knowing more than I do about how the registration works.

Mr. Gilbert. In New York, we have a City Board of Elections and they have offices in each county. Also, as the chairman pointed out earlier in the hearing, I believe it was yesterday, we have assembly districts in which a person is elected to the New York State Legislature. We also have in these assembly districts election districts where there are registrars or members appointed by the Board of Elections to register people.

Now, that small compact unit of election districts, would that be considered a political subdivision?

Mr. Katzenbach. Is each of these election districts run as a separate area for purposes of registration?" (p. 120)

Thereafter at page 121 of the transcript of said hearings follows the above quoted testimony relative to establishing a definition in the Act for "political subdivisions."

The government in its brief has not accepted the fact that voter registration is conducted differently in the various states. Mr. Katzenbach and the Department of Justice knew at the time the Act was introduced that in Alabama the cities do not register voters, but that they are registered by the counties. He specifically discussed this at the hearings before the House Subcommittee. Therefore, appellees contend that the various reports of the Attorney General or the Department of Justice to the Congress following the enactment of the 1965 Voting Rights Act have been misleading in assuming application of the Act to cities in Alabama. The Department of Justice, as the drafter of the Voting Rights Act, knew its limitations better than anyone, and if it has been applied to cities in Alabama or cities that do not register voters, it was erroneously done so. There was never any jurisdiction to apply the Act to a city which is not responsible for registering voters, it was erroneously done so. There was never any jurisdiction to apply the Act to a city which is not responsible for registering voters, and if this point had been properly raised, the cases should have been dismissed.

The Voting Rights Act and its history are crystal clear. Cities in Alabama are not subject to the preclearance provisions under Section 5 of the Act. The proscription of the Act as stated in Section 2 shows that cities that do not conduct voter registrations are not covered. The argument of the government that state coverage "includes all changes enacted within a state" (brief of U.S., page 13) is not in conformity with the law or with the clear and unambiguous language of the Act or the legislative history.

Under the theory proposed by the government there is no limitation on "changes enacted within a state or within a political subdivision which has been designated under Section 4(b)." How about the following elections: (1) Student government at the University of Alabama, (2) Homeroom officers at a City of Sheffield elementary school, (3)

cheerleaders at Sheffield High School. All of these are elections within a state which has been designated under Section 4(b) of the Act. The broad unsupported interpretation of the Act proposed by the government is ridiculous.

The argument that state coverage includes all changes enacted within a state will not coincide with other provisions of Section 5 of the Act. A political unit such as the City of Sheffield that does not register voters would have no standing or opportunity to seek a declaratory judgment in the United States District Court for the District of Columbia. A suit in that court by the City of Sheffield would be properly dismissed since the city is clearly not a "political subdivision." Also, as heretofore pointed out, Section 5 of the Act refers to determinations made under Section 4 of the Act: "Whenever a state or political subdivision with respect to which the prohibitions set forth in Section 4a of this act based upon determinations made under the first sentence of Section 4b of this Act are in effect. . . ." The scope of Section 5 depends on Section 4. The determinations made under Section 4 can only relate to political units, e.g., states or political subdivisions, that conduct voter registrations since only voter registering political units would have "tests or devices" as a prerequisite to voting. Section 4 relates exclusively to the elimination of discriminatory "tests or devices" that restrict voter registration.

The government equates the way the "Attorney General has consistently interpreted the Act" with law. The expansion of the Act which began with *South Carolina v. Katzenbach*, 383 U.S. 301, was further extrapolated by the government in its contentions in this case, that is, the Department of Justice equated the Attorney General's interpretation to law, all under the guise of doing "what is right." The government is requesting this court to enforce an idea or theory diametrically opposed to a legislative act.

Several states, including Alabama, were listed by the Attorney General in the *Federal Register* dated August 7, 1965, on page 9897, as provided by the Voting Rights Act, and several political subdivisions of states were listed by the Director of the Census. Nowhere is Sheffield, Alabama, listed however. If it had been intended that every political unit in a listed state was also covered by the Act, the Act could have so stated, but it does not. It would have been a simple matter for the drafters of the Act to have inserted an additional sentence such as "In any instance where the Act applies to a state, every political unit within the state is included." Nowhere, however, does such a sentence appear, but to the contrary the phrase "political subdivision" is specifically defined in Section 14(c)(2), 42 USCA 1973ℓ(c)(2), as meaning only counties (in the case of Alabama) since the registration of voters is conducted under the supervision of counties in Alabama.

The government argues as a rule of statutory construction that the reenactment of a statute by Congress in the face of administrative construction is persuasive of a legislative recognition and approval of the statute as thus construed. At best, the reenactment of a statute is a nebulous foundation for statutory construction since it is merely one factor in the total effort to give fair meaning to language. The rule offered by the Department of Justice is no more than an aid in statutory construction, useful at times in resolving statutory ambiguities. *Helvering v. Reynolds*, 313 U.S. 428, *United States v. Missouri Pacific RR*, 78 U.S. 269, and *Campbell v. Brown*, 245 F.2d 662 (5th Cir. 1957). The reenactment of a statute which has been construed by the Department of Justice is not an adoption of such construction unless the prior statute was itself ambiguous. *Helvering v. Elkins*, 402 U.S. 573. Moreover, the rule applies only where the construction by the Department of Justice is not plainly erroneous. *United States v. Missouri Pacific RR*, supra.

As stated before in this argument, the Act is not ambiguous, has never been ambiguous, and the construction placed on the Act by the Department of Justice is plainly erroneous.

The lower court was of the further opinion, and the appellees feel rightfully so, that by approving the referendum to change the form of government that the Attorney General in fact approved the change to the mayor-council form of government notwithstanding his caution to the town that the change also was subject to preclearance. Prior to his approval of the referendum, the Attorney General knew of the provision of Title 37 §426, Code of Alabama 1940 (Recomp. 1958) which provides for the "at large" election of council members. He knew that if the voters approved the change in form of government that the city would be obliged under state law to hold elections to elect a mayor, president of the city council and council members, all at large, and there was no way anyone could halt the election once it reached this stage. His approval of the referendum therefore was an implicit approval of the "at large" elections for the new government.

By approving the referendum, the Attorney General terminated his authority under the Act to continue to oversee the results of the "change" which he had already approved. See *Jenness v. Little*, 306 F. Supp. 925. In effect, the Attorney General has sought in this case to object to specific effects of the referendum which he had already approved, which effects are required under Alabama law, and which effects he knew would take place when he approved the referendum initially. The Attorney General has terminated and exhausted his authority under the Voting Rights Act to further oversee the consequences of his approval.

The government takes the position on page 14 of its brief that the district court decision in this case conflicts with the decisions of other district courts. So far as the appellees have

been able to determine, it was never raised as a defense in any of those cases that cities which do not register voters are not covered by the Act. The government cites two cases from the United States District Court for the Northern District of Alabama as authority for its position, *Woodard v. Lanier*, et al. N.D. Ala. No. CA 74-H-752-S, and *Darden v. City of Hueytown*, N.D. Ala. No. 76-P-1126-S. In the *Woodard case* the defendants admitted and stipulated that the City of Bessemer was covered by the Act. The Department of Justice attorneys also tried very hard to get the appellees in this case to stipulate that Sheffield was covered by the provisions of the Act. Appellees refused to so stipulate, because it was never felt or believed that the Act applied to the town of Sheffield.

It is noteworthy that one of the three judges sitting on the panel which heard the *Darden case* also was a member of the panel which heard the instant case. If the argument had been made that the City of Hueytown was not a "political subdivision" within the meaning of the Act, he certainly would have been aware of it.

If there had been any reported decisions, or any decisions anywhere that "nonregistering cities" are included in the definition of "political subdivisions" or are covered by the provisions of the Voting Rights Act, certainly the government would have cited them to the district court in this case, but no such citations were made. The case of *Perkins v. Mathews*, 400 U.S. 379, is not applicable to this decision; the defense raised in the instant case could not have been raised in *Perkins*, because the city involved in that case, Canton, Mississippi, did register voters, and therefore, did fall with the definition of "political subdivision" found in Section 14 of the Act, 42 USCA 1973ℓ(c)(2).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment and decree of the district court should be affirmed.

Respectfully submitted,

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September 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief has been served on Messrs. Wade H. McCree, Jr., Drew S. Days, III, and Walter W. Barnett, and Ms. Judith E. Wolf, attorneys of record for appellant, by mailing 3 copies of said brief to each of them, postage prepaid and properly addressed.

This the 14th day of September, 1977.

Vincent McAlister
Of Counsel for Appellees

Supreme Court, U. S.
FILED
JUN 22 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 76-1662

THE UNITED STATES OF AMERICA

v.

BOARD OF COMMISSIONERS OF
SHEFFIELD, ALABAMA

BRIEF FOR WESTHEIMER INDEPENDENT SCHOOL DISTRICT AMICUS CURIAE

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argument within a few days. The following brief is the consolidated brief which has been filed on behalf of the six (6) school districts and the City of Beeville, Texas, in the consolidated cases to be heard in Dallas, Texas, in July, 1977.

STATEMENT OF THE CASE

This memorandum deals with the question of whether the preclearance requirements of Section 5 of the Voting Rights Act of 1965 (42 U.S.C. §1973c) apply to cities and school districts. It also deals with the issue of whether, in view of the 1976 amendments to 28 U.S.C. §2284, the convention of a three-judge court is called for in cases where Plaintiffs allege cities and school districts have failed to comply.

SUMMARY OF ARGUMENT

The fact that the Voting Rights Act of 1965 as amended is so plain and unambiguous in its provisions makes the issue of coverage of cities and school districts a "false" issue. There simply is no issue, and no genuine substantial argument can be made that the preclearance requirements of Section 5 apply to cities and school districts. While it is true that issues raised under the Voting Rights Act must be decided by a three-judge court, there is no room for a holding that a three-judge court is required simply because the plaintiff *alleges* there is an issue under that act. A three-judge court is not required to rule on this issue, because the alleged "issue" lacks substance. The August 12, 1976, amendment to 28 U.S.C. §2284 makes this a matter to be ruled upon by a single district judge.

QUESTION PRESENTED

Whether a three-judge court is required to decide that a three-judge court is not required?

No question is presented concerning the coverage of the Voting Rights Act. That Act is plain and unambiguous and requires only that it be read—not that anything be decided.

ARGUMENT

POINT I: THE AMENDMENTS TO 28 U.S.C. §2284 WHICH BECAME EFFECTIVE ON AUGUST 9, 1976, SPECIFICALLY MADE THE QUESTION OF WHETHER A THREE-JUDGE COURT SHOULD BE APPOINTED A MATTER TO BE DECIDED BY A SINGLE DISTRICT JUDGE.

The principal case on the coverage of cities and school districts with respect to preclearance requirements of the Voting Rights Act of 1965 is *United States v. Board of Commissioners of Sheffield, Alabama,* No. 76-M-1086, N.D. Ala., Northwestern Division. That suit was filed on August 9, 1976, three days before the effective date of the 1976 amendments to 28 U.S.C. §2284. The issue here briefed was not presented. In *United States v. Texas,* 422 F. Supp. 917 (S.D. Tex., 1976), it was not raised.[1]

Under the ruling in *Allen v. Board of Elections,* 393 U.S. 544, (1969) it was the duty of a district judge to call for the convention of a court of three judges in most cases. Indeed Chief Judge Brown made it plain

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1. The issue was argued orally to the same Judge in another case on January 28, 1977, at which time the Court observed from the bench that this was a new issue to that Court.

in his appendix to *Jackson v. Choate,* 404 F.2d 910 (5th Cir., 1968) that his personal opinion was that a Court of three judges should be convened in virtually every case so that the three-judge panel could decide the question of whether a three or one judge court was required.

In 1976, however, the law was changed based on the recommendation of the Judicial Conference of the same year. The statute used to state as follows:

> "(5) ANY ONE OF THE THREE JUDGES OF THE COURT MAY PERFORM ALL FUNCTIONS, conduct all proceedings except the trial, and enter all orders required OR PERMITTED by the rules of civil procedure. . . ."

The capitalized words were deleted in the 1976 amendment. The pertinent part of 28 U.S.C. §2284 now provides as follows:

> "(1) Upon the filing of a request for three judges, the judges to whom the request is presented shall, *unless he determines that three judges are not required,* immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. . .
>
> "(2) . . .
>
> "(3) *A single judge* may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure. . ."
>
> (The iltalicized words were added by the amendment).

It was once written facetiously in a dissenting opinion in the Supreme Court of the United States that the Court

had adopted the practice of looking at the plain language of a statute only if the legislative history were ambiguous. The language of this amendment certainly is clear and plain enough that it should be unnecessary to look at legislative history to determine what it means.

A look at the legislative history, however, shows that the elimination of the Civil Rights Division's position is the very purpose of the amendment. The Congressional Record for August 2, 1976, at pages H8143-H8145 shows plainly that it was the intent and purpose of Congress to eliminate the necessity of a three-judge court in most cases. The House Committee Chairman, after pointing out that the amendment "in no way affects the right to a three-judge court *where otherwise mandated* by statute such as . . . the Voting Rights Act of 1975. . . ," stated as follows:

> "The present three-judge court statute dates from 1910. The purpose of Congress in enacting it was to limit the effect of the landmark decision of the Supreme Court in *Ex Parte Young*, 209 U.S. 123 (1908), which held that State officials could be enjoined by Federal Courts from enforcing unconstitutional statutes.
>
> "The Young decision came at the turn of the century, at a time of vigorous expansion of big business and the railroads.
>
> "In response to this expansion the States enacted regulatory statutes. However, following the Young case, these statutes were repeatedly enjoined by single Federal judges. . . . Today, however, the circumstances giving rise to the three-judge court statute have disappeared, and States no longer require this kind of protection from the arbitrary actions of a single judge.

> "Increasingly, however, the requirement of a three-judge court places an adminstrative burden on our Federal court system. The scarce judicial manpower of the Nation is inefficiently used by requiring three judges to convene for work that could be performed by one: . . . In response, the Judicial Conference requested this legislation to ease the administrative burden on our courts."

Additionally, please see 1976 U. S. Code Cong. and Adm. News, p. 3172 where, at the bottom of the page and extending to the top of the next page it is specifically noted that the decision of whether a three-judge court should be appointed is now a function of the district judge, and not the three-judge court itself.

We need look no further than the precedents of this Court for confirmation of this position. In *Webber v. White*, 422 F. Supp. 416 (N.D. Tex., 1976), this Court examined the plain language of both 42 U.S.C. §1973(c) and the 1976 amendments to 28 U.S.C. §2284 and ruled, unequivocally, that a single judge now has the clear authority to dismiss a cause of action under 1973(c) for failure to state a claim upon which relief can be granted. Please see, *generally*, 422 F. Supp. 416, 423-425.

Thus, as this Court ruled in *Webber, supra*, 28 U.S.C. §2284 as amended in 1976 does not *require* the appointment of a three-judge court. We respectfully urge that it does not even *allow* the appointment of a three-judge court because there must be some basis other than 28 U.S.C. §2284 upon which to justify the convention of such a court.

Accordingly, if Section Five of the Voting Rights Act does not apply to these defendants, there is no basis for

convening such a court. As we will demonstrate in Point II, *infra*, the argument that coverage is present is absolutely without merit and cannot afford the basis for the appointment of a court of three judges. Any court of three judges which has been convened subsequently to August 9, 1976, for the purpose of hearing argument that the Voting Rights Act of 1965 applies to a city or a school district should decide one issue, and one issue only. The only decision that court should make is that the convention of a court of three judges has been improperly called for and that such Court has been convened improperly. Since the Voting Rights Act of 1965 clearly does not apply to cities and school districts insofar as the preclearance requirements of 42 U.S.C. § 1973c are concerned, the three-judge court should disband itself and the single judge originally having responsibility for the case then should enter an order dismissing the case. *Webber v. White, supra,* at 430.

POINT II: THE PRECLEARANCE REQUIREMENTS OF THE VOTING RIGHTS ACT DO NOT APPLY TO CITIES AND SCHOOL DISTRICTS BECAUSE:

A. The Statutory Language Is Plain And Unambiguous In Its Designation Of The Applicability Of The Preclearance Requirements.

It is a cardinal principle of law that when the evidence of a certain fact is such that reasonable minds could not differ, that fact is said to be established as a matter of law. We believe the converse of this also is true. When statutory provisions and wording are such that reasonable minds could not differ, those provisions are law as a matter of fact.

Cities and school districts in Texas do not register voters. This is done only by counties. Tex. Elect. Code §5.092. In spite of the fact that a voting precinct or entity which does not register voters is specifically excluded from the definition of "political subdivision" in the 1965 amendments to the Voting Rights Act, it is still argued by the Civil Rights Division and others that they should be considered "political subdivisions" anyway for preclearance purposes.

The preclearance requirements are set forth in Section 5 (42 U.S.C. §1973c) and apply to those entities which Section 4, (42 U.S.C. § 1973b) *says they apply to*. We give every presumption in favor of the result sought by the proponents. Still, how are we to reach the conclusion the act does something which it plainly and specifically does not do? If the Attorney General *and* the Director of the Census determine certain facts about a State, the Voting Rights Act of 1965 as amended applies to that State. 42 U.S.C. §1973b(b). So, for these purposes, we accept that the Act applies to the State of Texas.[2] Let us look at what that means. The Act *says* in Section 5, 42 U.S.C. §1973c, that:

> "Whenever a *state* or *political subdivision*. . . shall enact or seek to administer (certain changes) with respect to voting different from that (previously in effect) . . ." it shall follow one of two prescribed procedures for pre-clearance. (emphasis supplied)

Since the Act in plain and simple language *says* it applies to states and political subdivisions, and specifically defines political subdivisions, how can it be argued in good faith that it applies to something other than a state or "political subdivision" as defined?

2. This issue is before the Supreme Court in *Briscoe v. Levy*, Docket No. 76-60, and at present is awaiting decision.

We respectfully submit and urge that it can not be done.

B. No Reasonable Argument To The Contrary Can Be Made.

This subpoint of this brief is extremely broad. It is based upon the premise, however, that if a reasonable argument could be made, it would have been made by now in at least one of the many pending cases. We have examined all of briefs available to us which were filed in several of the cases (pending before this Court).

In the *Trinity Independent School District* case, the Civil Rights Division has argued legislative intent and legislative history in various forms. There is no reference anywhere in that entire 44 page writing to the specific language of the Act which they claim makes cities and school districts subject to the preclearance requirements. The closest that brief comes to making reference to the specific wording of the Act is at page 8 where it is said:

> "The language used by Congress in Sections 4 and 5 of the Act is clear and *demonstrates no intention to exempt* . . . changes . . . made in school districts. . ." (emphasis supplied)

This demonstrates they have missed the entire point of the controversy. No one has ever claimed cities and school districts are *exempted* from the preclearance requirements. They simply are not *included* in the first place.

The principal point the Civil Rights Division tries to "smoke screen" around is that where a statute is plain and unambiguous, it is the duty of the courts to enforce the Act as written, and the questions of legislative history and intent are out of place in any argument about what the Act does. *Caminetti v. United States*, 242 U.S. 470, 37 S. Ct. 192, 61 L.Ed. 442 (1917), 485 (1917); *Application of Martin*, 195 F.2d 303, 305 (C.C.P.A. 1952), *certiorari denied* 344 U.S. 824; *U.S. v. Kurzenkanbe*, 136 F. Supp. 17, 19 (D.C.N.J. 1955). In *United States v. Public Utilities Commission of California*, 345 U.S. 295, 319 (1953), Mr. Justice Jackson in a concurring opinion wrote:

> ". . . by analysis of the statute instead of by psychoanalysis of Congress. When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of the Congressmen and act according to the impression we think this history should have made on them. Never having been a Congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute."

Moreover, the Supreme Court in *Chandler v. Roudebush*, 48 L.Ed.2d 416 (1976), wrote:

> "The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

In the Trinity brief, they have attempted to use this doctrine to support the argument that the language of the

Act shows no intention to *exempt* cities and school districts. The point they do not touch on, and indeed can not attempt to answer, is that the preclearance requirements of Section 5 plainly apply to "a state or political subdivision" *only*. The definition of "state" is not included within the Act. We must assume it has its usual and ordinary meaning. *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 506 (1944); *Deputy v. DuPont*, 308 U.S. 488, 498 (1939); *Reliable Volkswagon v. World-Wide Automobile Corp.*, 216 F. Supp. 141, 143 (D.C.N.J. 1963). In a school district case in which the meaning of the term "state" was considered, it was held that a school district could not claim the immunity given to the states by the Eleventh Amendment. *Fabrizio & Martin, Inc. v. Board of Education Central School District No. 2*, 290 F. Supp. 945 (S.D. N.Y., 1968); *rev'd* on other grounds, 523 F.2d 378 (2d Cir. 1975). In that case at page 948 the Court wrote:

> "It appears conclusively that, although a Central School District engages in the carrying out of a particularly important governmental function which traditionally is the responsibility of the state, it does so as an autonomous agency, at least with respect to the establishment, support, fiscal and business management and control of its schools."

The term "political subdivision" is defined, however, and the definition given in the Act is the definition which must be used regardless of what its usual and ordinary meaning may be. *Western Union Telegraph Co. v. Lenroot, supra* at 502; *Fox v. Standard Oil Co.*, 294 U.S. 87, 96 (1934); *U.S. v. Clark*, 412 F.2d 885, 890 (5th Cir. 1969). That definition, found at §1973 1(c)(2), states in its entirety that:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

The Civil Rights Division's brief completely ignores the fact that it tries to make cities and school districts subject to the Act *contrary* to the expressed wording of the Act. It takes something more than imagination to do that; it takes distortion. We agree with the statement made at page 5 of the Reply Brief filed by the City of Sheffield, Alabama:

> "In its brief we believe that the Department of Justice has attempted to mislead the Court with selected quoted and copied portions of testimony offered at the hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Congress, First Session."

The Civil Rights Division cites testimony before the House Committee extensively. Let us concede that some witnesses thought or wished the result the Civil Rights Division now urges. The plain language of the statute precludes it, however. In *Lohf v. Casey*, 330 F. Supp. 356 (Colo., 1971), a similar argument was answered as follows:

> "In the first place, the Congress made no attempt in the statute to distinguish between member and non-member firms, and we 'cannot impose upon the plain language [our] own idea of what Congress must have meant.' H. A. Brody Corp. v. United States, 197 F. Supp. 918, 922 (S.D. Iowa, 1961). Burge v. Commissioner of Internal Revenue, 253 F.2d 765,

> 769 (4th Cir. 1958); MacKenzie v. Hare, 239 U.S. 299, 308, 36 S.Ct. 106, 60 L.3d. 297 (1915)."

The Civil Rights Division's brief, in its effort to have this Court "impose" preclearance on cities and school districts, cites continuously from the testimony of various witnesses at both the House and Senate Hearings. But nowhere do they cite any testimony, nor any committee report, nor any sponsor, nor any other *authoritative* source for the proposition that this Act was intended to mean anything different from what it says. The entire argument is that "the Congress must have meant this because these witnesses said this at the hearings." The Supreme Court said in *MacKenzie v. Hare*, 239 U.S. 305, 308, (1915), that:

> "Whatever was said in the debates on the bill or in the report concerning it, preceding its enactment or during its enactment, must give way to its language; or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussions some may have been given more prominence, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

As far as the long list of city and school district submissions is concerned, it shows only that submissions have been made. Many of the defendants in this case made submissions. If the Civil Rights Division had approved, we would be educating children now instead of spending needless energy answering the frivolous arguments the Civil Rights Division has dreamed up in its desperation. As to the numerous cases cited in which the preclearance requirements have been held to apply to jurisdictions other

than "political subdivisions," we point out only that this issue was not raised in any of them. The precise issue has been answered only in *United States v. Sheffield*. After arguing that *Sheffield* is not binding authority, in the Trinity brief, the Civil Rights Division further states that it does not understand the opinion in *Sheffield*, and further confesses that it does not understand the fact that its arguments are "untenable" as they were described by that Court.

C. When The Voting Rights Act Means "Cities And School Districts" It Says "Cities And School Districts".

Section 1971(a)(1) of the Voting Rights Act provides that:

> "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any *State, Territory, District, County, City, Parish, Township, School District, municipality, or other territorial subdivision*, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; . . ." (emphasis supplied)

Section 1973c of the same Act provides that:

> "Whenever a *State or political subdivision* . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure . . ." (emphasis supplied)

Section 1973 1(c)(2) defines political subdivision as only those subdivisions which register voters. (Please see POINT IIB, *supra*, for complete definition.)

The specific inclusion of cities and school districts in Section 1971(a)(1) and the subsequent omission of those terms in Section 1973c is of great significance in determining whether cities and school districts are subject to the provisions of Section 1973c. The well established rule of statutory construction, *Inclusio Unius Est Exclusio Alterius* (the inclusion of one is the exclusion of another), operates in this case to preclude the Civil Rights Division's contention that once a state is covered, all subdivisions within that state are covered as well. *Federal Trade Commission v. Simplicity Pattern Company*, 360 U.S. 55, 67 (1959);[3] *United States v. Atchison, T. & S. F. R. Co.*, 220 U.S. 37, 44 (1911);[4] *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 562 (2d Cir. 1956);[5] *Hamilton v. National Labor Relations Board*, 160 F.2d 465, 470 (6th Cir. 1947) *certiorari denied* 332 U.S. 762.[6] The rule was recently reaffirmed by the Fifth Circuit in a *per curiam* opinion in *United States v. Wong Kim Bo.*, 472 F.2d 720, 722 (5th Cir. 1972). In that case the Court wrote:

> "Moreover, where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally pre-

---

3. The Supreme Court wrote: "We cannot supply what Congress has studiously omitted."

4. Mr. Justice Holmes wrote: "The presence of such a provision in the one part and its absence in the other is an argument against reading it as implied."

5. The Court wrote: "Where such a provision has been carefully included in one place and excluded in another place in a definitional statutory provision, it should not be implied in the place omitted."

6. The Court wrote: "Such an intentional omission is significant and important."

sumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

In *Federal Trade Com. v. Sun Oil Co.*, 371 U.S. 505, 515 (1963), the Supreme Court decided a case similar to ours in that the statute under discussion involved in the first instance a broad interpretation followed by language necessitating a narrower interpretation. The Court wrote:

> "There is no reason appearing on the face of the statute to assume that Congress intended to invoke by omission in Section 2(b) the same broad meaning of competition or competitor which it explicitly provided by inclusion in Section 2(a); the reasonable inference is quite the contrary."

It is apparent that Congress intended that Section 1971(a)(1) apply to cities and school districts. It is equally apparent that Congress intended that Section 1973c not apply to cities and school districts. Indeed, had Congress intended to subject cities and school districts to the preclearance requirements of Section 1973c, it could easily have done so by simply using the same language used in Section 1971, where cities and school districts were specifically included, and it should not be presumed lightly that the Congress is unaware of these cardinal principals of statutory construction.

D. The Civil Rights Division's Contention That If A State Is Covered All Subdivisions Within That State Are Covered Is Contrary To The Wording Of The Statute.

The Voting Rights Act of 1965 was specifically designed by Congress to eliminate some illegal registration

practices found to be occurring in a few states. *South Carolina v. Katzenbach*, 383 U.S. 301, 328-29 (1966). Of these states, only Louisiana has parishes. Indeed, of all the fifty states, only Louisiana is subdivided by the parish. If it were meant by the statute that all subdivisions in a covered state were covered, it would not have been necessary to define "political subdivision" as including a "parish" because every parish in the United States would have been covered already when Louisiana was brought under the Act initially in 1965. The strained construction put on the Act by the Civil Rights Division would render the word "parish" in §1973 1(c)(2) meaningless. Statutes should be construed so that some of their words are meaningless. *Wilderness Society v. Morton*, 479 F.2d 842, (D.C. Cir. 1973) *certiorari denied* 411 U.S. 917; *U.S. v. Wong Kim Bo*, 472 F.2d 720 (5th Cir. 1972); *U.S. v. Johnson*, 462 F.2d 423, (3rd Cir. 1972) *certiorari denied* 410 U.S. 937. In *Wilderness Society*, (supra), the Court wrote:

> "It is a well known maxim of statutory construction that all words and provisions of statutes are intended to have meaning and are to be given effect, and words of a statute are not to be construed as surplusage. See McDonald v. Thompson, 305 U.S. 263, 266, 59 S.Ct. 1976, 83 L.Ed. 164 (1938); D. Ginsberg and Sons, Inc. v. Popkin, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704 (1932); Klein v. Republic Steel Corp., 3 Cir., 435 F.2d 762, 765-766 (1970); Consolidated Flower Shipments, Inc. - Bay Area v. C. A. B., 9 Cir., 205 F.2d 449, 450 (1953). *We should be particularly mindful of this maxim in cases such as these where there is specific evidence that Congress placed significance on the statutory language in dispute.*" (emphasis supplied)

Indeed, if a reasonable interpretation can be given to the statute including the word then an interpretation which renders that word superfluous cannot be adopted. *Ex Parte Public National Bank*, 278 U.S. 101, 104 (1928); *Consolidated Flower Shipments, Inc.*, (supra); *England v. Moore Equipment Company*, 94 F. Supp. 532 (N.D. Cal. 1950), *affirmed* 185 F.2d 1019. This is especially true when dealing with §5 because Congress intended it to apply to a few readily identifiable states. It said to whom within the various states, covered or otherwise, that section could apply by using a specific definition of the term "political subdivision". In view of the great amount of consideration given the Act in general and the definition of political subdivision in particular, no part of that Act should now be rendered meaningless by adopting the strained construction advanced by the Civil Rights Division.

E. Congress Has Given The Term "Political Subdivision" A Unique Definition Which Is Not To Be Ignored.

A significant question which the Civil Rights Division has not attempted to answer in its briefs to date is the implication of the unique definition of political subdivision offered in the Act. We say *unique* because it is wholly unprecedented and completely deviates from the meaning Congress and the Attorney General's office have given it in the past.

"Political subdivision" has been defined in the Social Security Act as ". . . an instrumentality of (A) a state, (B) one or more political subdivisions of a State, or (C)

a State and one or more of its political subdivisions." 42 U.S.C. §418(b)(2). The term is used in the Internal Revenue Code [26 U.S.C. §103(a)(1)] and the Labor Management Relations Act [29 U.S.C. §152(2)], but is not defined in either of these statutes. In these circumstances the term has been construed broadly in the context of the issues presented. *See, generally, N.L.R.B. v. Natural Gas Utility District*, 402 U.S. 600, 29 L.Ed.2d 206, 91 S. Ct. 1746 (1971).

Past attorneys general have defined the term to include ". . . any division of the state made by the proper authorities thereof . . . for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public" 30 Op. Atty. Gen. (1914) p. 252, and "any subdivision of the state created for a public purpose. . ." 38 Op. Atty. Gen. (1937) p. 563. This definition or an indistinguishable form of it has been used so routinely by Congress that it can almost be said to represent the standard federal definition of that phrase. See, *e.g., N.L.R.B. v. Natural Gas Utility District, supra,* 402 U.S. 600, 608-609.

It thus can be presumed that Congress was aware of this standard definition when it was considering Section 5 of the Voting Rights Act. And yet, the following colloquoy occurred:

> Mr. Tenzer: ". . . Since you agree to define in the law the term 'election', would you also agree to define the term 'political subdivision', *so there would be no question about that as one that regularly maintains a system for registering voters?*

> Mr. Katzenbach: "I think it might be a good idea to define political subdivision. I think the committee ought to consider giving it consideration." (emphasis supplied)
>
> Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Session p. 467.

The resulting language of the definition itself demonstrates clearly that "political subdivision" as used in this Act is to mean something different from its normal definition. The sharp deviation from the historically settled federal definition of "political subdivision" makes this intention undeniably clear. When Congress used it in the past, it included *inter alia* transportation authorities, [*C.I.R. v. Shamberg's Estate*, 144 F.2d 998 (2nd Cir. 1944)], utility districts [*N.L.R.B. v. National Gas Utility District, supra*] and cities [*Supreme Forest Woodmen's Circle v. Belton*, 100 F.2d 655 (5th Cir. 1938)]. And yet in spite of a complete departure from the standard all-inclusive Federal definition, in language painstakingly crafted to encompass governmental entities which legislate or conduct voter registration, the Civil Rights Division argues that this unique definition is to be *ignored*. (See p. 31 of the Civil Rights Division's brief filed in *United States v. Trinity Independent School District*.)

To ignore this definition, and its relationship to the term "state" (which is assumed to bear its standard meaning, Part II(B), *supra*) is to overlook the Congressional scheme which is the *very core of the preclearance concept*. In order to effect prompt and meaningful protection for voting rights, blacks had to be admitted into the electoral process. In other words they had to be *registered*. The

blocks to registration came in two forms — discriminatory legislation (at the state level) and discriminatory enforcement of that legislation (at the County or parish level). It was simply not enough to strike down newly passed legislation. Congress had to devise a means to achieve equal protection in the registration process itself to preclude *ad hoc* selective changes at *that* level of government. Its solution was the unique definition of "political subdivision", aimed at attacking vices in the registration process itself.[7] This created a perfectly ordered scheme of a guaranteed admission to the electoral process.

And now the Civil Rights Division urges a construction of this section which calls for the Court to ignore a legislative definition in order to distort this Congressional purpose. In the interest of preserving this Congressional scheme we urge that statutory language is not to be ignored, at the urging of the Civil Rights Division or anyone else.

CONCLUSION

Section 1973(c) applied to states and political subdivisions, which is defined in the Act as only those entities which register voters. Further, when the Act means "cities and school districts" it says "cities and school districts". Nowhere in §1973 of the Act is "city" or "school district" mentioned while §1971 of the same Act is expressly made to apply to both.

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7. We would call the Court's attention to the structure of the first sentence of the section, which repeats three times the dichotomy "State or political subdivision . . . enact or seek to administer." "State" is clearly intended to be coupled with "enact", so that statewide legislation will be covered. "Political subdivision" thus is linked to "seek to administer" so that local enforcement of registration laws will be covered.

Congressional language should not be ignored, neither should it be rendered meaningless. Both of these results obtain, however, if the Civil Rights Division's interpretation is adopted. Had a reasonable argument been available in support of the Civil Rights Division's position it certainly would have been made by now. As long as the language of Section 1973(c) remains in its present form, there will be no argument forthcoming which will not require that the Court wholly ignore crucial parts of the statute. Ignoring the language, however, will not make it go away. Section 1973(c) simply does not grant the Civil Rights Division the power it seeks in these proceedings, and we pray for a declaration to that effect.

Respectfully submitted,

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CERTIFICATE OF PERMISSION TO FILE

I hereby certify that permission to file this amicus curiae brief was granted orally by Mr. Vincent McAlister, counsel for Appellee, and by Mr. Howard E. Shapiro of the Office of the Solicitor General this 21st day of June, 1977. The reason this permission was not obtained in writing is that counsel did not know of the current status of this matter until news media called it to his attention on June 20, 1977, and on this date we learned from the Clerk of this Court that the matter is scheduled to be considered on its merits by the Court on June 23, 1977. Accordingly, we have endeavored to expedite this filing.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amicus Curiae Brief in Support of Appellee's Motion to Affirm has been served upon Mr. Vincent McAlister, Almon, McAlister & Ashe, P. O. Drawer N, Sheffield. Alabama, 35660; and Mr. Howard E. Shapiro, Solicitor General's Office, United States Department of Justice, Washington, D. C., 20530, by mailing a copy of same in a properly addressed and stamped envelope this 21st day of June, 1977.

ORIGINAL SIGNED
JAMES E. ROSS

JAMES E. ROSS

Printed copies furnished as above this 8th day of July, 1977.

ORIGINAL SIGNED
JAMES E. ROSS

JAMES E. ROSS

MOTION FILED
AUG 11 1977

FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA, *Appellant*

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

On Appeal From the United States District Court For the Northern District of Alabama

MOTION OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND ET AL., TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

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Appellees.

On Appeal From the United States District Court for the Northern District of Alabama

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund hereby moves the Court, pursuant to Rule 42(3) of its Rules of Practice, for leave to file the attached brief as amicus curiae in support of reversal of the judgement below. This motion and the attached brief are timely filed within the

time allowed for filing of Appellant's brief on the merits. Appellant, the United States, has given its consent to the filing of this brief by letter from the Solicitor General which has been filed with this Court. Appellee has not consented to this filing. In support of this motion, we rely on the following:

1. Interest of Amicus Curiae.

The Mexican American Legal Defense and Educational Fund is a not-for-profit corporation dedicated to ensuring that the civil rights of Mexican Americans are properly protected. With offices throughout the Southwest, in California, and in Washington, D.C., MALDEF provides provides legal assistance to safeguard the Mexican American community's educational, political and voting rights.

Protecting the voting rights of Mexican Americans has been one of MALDEF's primary concerns and to this end MALDEF has represented Mexican American voters throughout the Southwest in a number of lawsuits. Additionally, it has provided technical assistance to the Congressional committees which held hearings on the Voting Rights Act Amendments of 1975. The voting rights of Mexican American citizens of Texas and the continuing coverage of all political jurisdiction in Texas under

the Voting Rights Act is of particular concern to MALDEF. It has recently expressed and explained this concern to the Court in its role as amicus curiae in Briscoe v. Bell, No. 76-60 (October Term, 1976). MALDEF has devoted substantial resources to monitor and implement the 1975 amendments, has brought many cases under the Act, and has filed other actions challenging discriminatory voting practices and procedures on behalf of Mexican American voters in Texas. However, MALDEF does not have sufficient resources to challenge all such practices, thus, continued application of the provisions of the Voting Rights Act to all political subdivisions of the State of Texas and other covered states, here challenged by the Board of Commissioners of Sheffield, Alabama, is essential if the voting rights of Mexican Americans are to be fully protected. The outcome of this litigation vitally concerns the voting rights of Mexican Americans in more than 3000 governmental units in the State of Texas alone.

2. Facts and Questions That May Not Be Fully Presented by the Parties.

A significant number of Mexican American voters, primarily in the State of Texas will be directly influenced by the outcome of the instant case. In 1975, after extensive hearings,

Congress passed amendments to the Voting Rights Act which extended the Act's coverage to the State of Texas and its political subdivisions. Since the passage of these amendments Mexican American voters in Texas have made strides in overcoming more than a century of discrimination hindering their access to the political process. The section 5 preclearance requirements of the Act applied to all the governmental units in Texas have been the major vehicle for increasing Mexican American political access and ending discrimination in the electoral process. If the section 5 coverage of the majority of these governmental units were to end, Mexican American voters would lose their most valuable tool in their struggle to end discrimination in voting and many jurisdictions would act in ways adverse to the interests of Mexican Americans as they did before the 1975 Amendments became effective. Congress intended, by the passage of the 1975 Amendments, to end such discrimination. Its intent would be subverted by limiting section 5 coverage to those jurisdictions which conduct voter registration.

The foregoing considerations are relevant to disposition of this case and are discussed in the attached brief.

3. Conclusions.

For the reasons stated above, the Mexican American Legal Defense and Educational Fund move that the Court grant leave to file the attached brief as amicus curiae.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976
No. 76-1662

UNITED STATES OF AMERICA,

Appellant,

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, et al.,

Appellees.

On Appeal From the United States District Court for the Northern District of Alabama

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BRIEF ON BEHALF OF AMICUS CURIAE

Mexican American Legal Defense
and Educational Fund

STATEMENT

In 1965 against a background of a century of neglect of the civil rights of Black citizens, Congress enacted the Voting Rights Act of 1965, 42 U.S.C. §1973, et seq. (hereinafter "the 1965 Act" or "the Act." The 1965 Act was grounded upon Congressional findings that the voting rights of Black Americans had been systematically and effectively suppressed at the state and local level in the southern

United States. The Act "was designed by Congress to banish the blight of racial discrimination in voting which has infected the electoral process in parts of our country for nearly a century." South Carolina v. Katzenbach 383 U.S. 301, 308, 86 S.Ct. 803, 808 (1966).

The 1965 Act contained a scheme of remedial provisions designed to identify those states where voting discrimination had been particularly egregious and to monitor carefully all voting and electoral laws and practices within those States and their political subdivisions. Once a State was identified by the United States Attorney General and the Director of the Census as being covered by the 1965 Act. Section 5 of the Act, 42 U.S.C. §1973c prohibits the enactment or enforcement of any new voting regulation or law within the State until it is reviewed and approved by the Attorney General.

In 1975, the Congress re-examined the problem of voting discrimination in America and found that the same pattern of disenfranchisement and dilution of Black voter rights which confronted Black citizens in the South in 1965 confronted Mexican American voters in Texas. Following extensive hearings,

Congress passed the 1975 Amendments to the 1965 Act.[1/] By the designation of the U.S. Attorney General and the Director of the Census, the Act and the 1975 Amendments were made applicable to the State of Texas and its political subdivisions in September, 1975, 40 Fed.Reg. 43746. In Briscoe v. Bell, _____U.S. _____, 97 S. Ct. 2428 (1977), the Court affirmed the validity of applying Section 5's preclearance provisions to the State of Texas.

On December 13, 1976, a three judge United States District Court construed the Voting Rights Act in such a way as to limit the Section 5 preclearance those states or political subdivisions therein which conducted voter registration. This construction of the Act excludes from Section 5 coverage, numerous jurisdictions conducting elections in states such as Alabama and Texas which are subjected in their entirety to such coverage by Section 4(b), 42 U.S.C. 1973b(b) of the Act.

Were the District Court's startling and unprecedented limitation of Section 5 sustained by the Court, the beneficient remedial measures sought to be enacted by

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1/ 89 Stat. 400

Congress would be nullified insofar as municipal, school district and other special district elections are concerned. Mexican American voters throughout the State of Texas, and in other jurisdictions now thought to be covered under Section 5,[2/] would then be returned to a condition in which they found themselves prior to 1975 because of their diluting voting rights, a condition characterized by "invidious discrimination in education, employment, economics, health [and] politics. . ." Graves v. Barnes, 343 F. Supp. 704, 728 (W.D. Tex. 1972), aff'd. in relevant part sub nom.; White v. Regester, 412 U.S. 755 (1973).

Because of the history of voting rights discrimination against Mexican Americans in Texas, the nullification of Section 5 as

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2/ Texas and Arizona are the two Southwestern States designated under Section 4(b) as being subject to the preclearance requirements of Section 5. Other Southwestern political jurisdictions with substantial Mexican American populations which are subject to Section 5 include counties in California, Colorado, and New Mexico. The most substantial number of Mexican American voters politically affected by the decision in the instant case reside in Texas and thus, amicus, presents the past and current situation in Texas to this Court in more detail.

applied to local electoral units would present a grave threat to the newly achieved rights of Mexican American voters. Those rights are at stake in this case.

SUMMARY OF ARGUMENT

In enacting the Voting Rights Act, Congress acted pursuant to the enforcement powers granted by the Fifteenth Amendment to the United States Constitution and with the intent to end voting discrimination. Both the 1965 Act and the 1975 Amendments were enacted following extensive hearing documenting widespread abuse at all levels of electoral politics in various jurisdictions. Congress, aware that its previous attempts to guarantee the right to vote to all citizens had been unsuccessful, intended to enact the broadest possible remedy to end the pervasive discrimination it found.

The Act was adopted to insure that all voters in all elections in those areas of the country with history of voter discrimination had equal and unimpeded access to the polls and that their voting strength would not be impermissably diluted. The Act includes a mechanism by which these areas are to be identified and a provision which requires that all voting changes enacted or administered within the identified jurisdiction be

precleared by the Attorney General. The claim asserted in this case by the City of Sheffield, that only those changes implimented by the designated state or political subdivision are subject to the requirements of Section 5, is contrary to Congress' intent. If all changes within a designated jusisdiction are not subject to preclearance, the rights of minority voters would be unprotected in the majority of elections. Since many governmental units in designated areas would be free to continue discriminatory practices, the intent of Congress to ensure all voters fully equal access to the polls regardless of the elction in which they exercise their right to vote would be subverted.

In resolving the issue of statutory construction presented here, the intent of Congress is instructive. The only logical construction of Section 5 of the Act, the preclearance requirement, and Section 4(b), the designation section, is that advanced by the United States. When these sections are read in light of the Act's structure, purpose, administrative and legislative history, it is clear that all political units within a designated state or other political subdivision should be subject to Section 5 preclearance requirements.

ARGUMENT

1. SECTION 5 OF THE VOTING RIGHTS ACT APPLIES TO MUNICIPALITIES AND OTHER POLITICAL UNITS WHICH DO NOT CONDUCT VOTER REGISTRATION.

A. A construction of the Voting Rights Act which limits Section 5 coverage to those political jurisdictions conducting voter registration would detrimentally affect Mexican Americans' voting rights which Congress meant to secure.

The systematic, pervasive and repetitive efforts of local, as well as state and county, election districts in Texas to disenfranchise Mexican Americans by intimidation, poll taxes, language tests, gerrymandering and other methods of vote dilution were the particular targets of Congressional action in the 1975 Amendments.[3/]

[3/] Amicus refers the Court to the Brief of the Mexican American Legal Defense and Educational Fund, NAACP Legal Defense and Educational Fund, Leadership Conference on Civil Rights as Amici Curiae on file with the Court in Briscoe v. Bell, No. 76-60 (October Term, 1976), for a detailed discussion of systematic and pervasive discrimination against Black and Mexican American voters in Texas. That brief also demonstrates that Congress meant to remedy those abuses by the 1975 extension of the Act to jurisdictions like those in Texas which have historically denied Mexican Americans voting rights

There are 254 Counties in Texas which would remain covered by Section 5 if the District Court decision is affirmed. There are, however, more than 2,900 special districts (including hospital, transit and junior college and airport districts), 1,475 school districts and over 1,200 municipalities in Texas.[4/] Each of these entities would presumably be free to effect whatever changes in voting requirements it wished, free of Section 5's preclearance requirement. Thus, as applied to the State of Texas, the District Court's interpretation of Section 5 would mean that all local political units which do not register voters, including cities, school districts, water districts and utility districts, could return, uninhibited, to those discriminatory practices which Congress found as the factual predicate for extending Section 5 to Texas.[5/]

The need for Section 5's preclearance requirements has been confirmed by the experience in Texas both before and since the District Court's decision in Sheffield. Since the enactment of the 1975 Amendments,

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[4/] Texas Almanac, 1976-1977

[5/] See, infra at 19-20.

there have been more than 2,300 Section 5 submissions from jurisdictions in the State of Texas to the Attorney General. Seventy-four percent of the proposed voting changes were made by political units of the State which do not register voters.[6/] Those statistics confirm what Congress found, i.e., those political units which most immediately affect voters in their day-to-day lives would be the units whose activities required the most monitoring.

As a result of the preclearance mechanism mandated by Section 5, the Attorney General has objected to proposed voting changes in a substantial number of municipalities and school districts because such charges would operate to discriminate against minority voters. The following is a partial list of letters of objection issued by the Attorney General during a fourteen month period against municipalities and school districts.

6/ Brief of the U.S. Attorney General in Hereford Independent School District v. Griffin B. Bell et al., Civil Action No. CA-2-77-14, filed June 17, 1977. (Three judge panel, N.D. Texas)

Date	Political Entity	Objectionable Change
Feb. 2, 1976	City of Tyler, Smith Co.	City Reapportionment
March 9, 1976	Forney I.S.D., Kaufman Co.	Place System and Majority Vote Requirement
March 10, 1976	Texas City, Galveston	Place System
March 11, 1976	City of Monahans, Ward Co.	Numbered Post
March 12, 1976	Dumas I.S.D., Moore Co.	Numbered Post and Majority Vote Requirement
March 19, 1976	Orange Grove I.S.D., Jim Wells Co.	Numbered Post
March 23, 1976	City of Pecos, Reeves Co.	Numbered Post
March 24, 1976	Chapel Hill I.S.D., Smith Co.	Majority Vote Requirement
March 29, 1976	City of Luling, Caldwell Co.	Voting Procedures
March 30, 1976	Lockney I.S.D., Floyd Co.	Majority Vote and Numbered Post
April 2, 1976	Victoria I.S.D. and Mission I.S.D., Victoria Co.	Consolidation of School Districts
April 2, 1976	City of San Antonio, Bexar Co.	Annexations
April 19, 1976	Liberty I.S.D., Liberty Co.	Majority Vote and Numbered Post
May 5, 1976	Pettus I.S.D., Bee Co.	Numbered Post
May 11, 1976	City of Lockhart, Caldwell Co.	Majority Vote Requirement
May 17, 1976	City of Rusk, Cherokee Co.	Place System
May 21, 1976	Trinity I.S.D., Trinity Co.	Numbered Post
May 24, 1976	Hereford I.S.D., Deaf Smith Co.	Majority Vote Requirement
July 29, 1976	Marshall I.S.D., Harrison Co.	Majority Vote Requirement
August 6, 1976	Midland I.S.D., Midland Co.	Numbered Post and Majority Vote Requirement
October 8, 1976	Pettus I.S.D., Bee Co.	Reconsideration of Letter of Objection issued May 5, 1976. Denied
November 12, 1976	City of Woodville, Tyler Co.	Numbered Post
January 13, 1977	Westheimer I.S.D., Harris Co.	Creation of New School District
March 1, 1977	Somerset I.S.D., Bexar Co.	Place System
March 23, 1977	Ralls I.S.D., Crosby Co.	Majority Vote Requirement
March 24, 1977	Lufkin I.S.D., Angelina Co.	Numbered Post and Place System
March 25, 1977	Raymondville I.S.D., Willacy Co.	Polling Place
April 11, 1977	Praire Lea I.S.D., Caldwell Co.	Majority Vote Requirement Polling Place, Numbered Posts

As a result of these objections, those jurisdictions were prevented from implementing a number of discriminatory voting changes. Since Sheffield, however, local jurisdictions have resumed a pattern wholly consistent with the pattern of discriminatory activity which was the factual basis for the 1975 Amendments' inclusion of Texas. That is, there has been a widespread effort to implement voting changes whose obvious design it is to disenfranchise minority voters, including Mexican Americans. These discriminatory actions by Texas governmental units have forced the Justice Department and private litigants to pursue, on a case-by-case basis, the vindication of those rights guaranteed under the 1975 Amendments.

In the United States v. Board of Trustees of Chapel Hill I.S.D., Case No. TY-77-137-CA (E.D. Tex.); United States v. Westheimer I.S.D., Civil No. 77-H-121 (S.D. Tex.); United States v. Midland I.S.D., Civil No. MO-77-17 (W.D. Tex.); United States v. Hawkins I.S.D., Civil No. TY-77-81 (E.D. Tex.); Gomez v. Galloway (City of Beeville), Civil No. 76-146 (S.D. Tex.) and Hereford I.S.D. v. Bell, Civil No. 2-77-14 (N.D. Tex.), the school boards and cities involved have, in reliance upon the Sheffield decision, ignored the requirements of Section

5 that they seek preclearance from the Attorney General for changes in voting requirements.

In effect, these entities and others engaging in similar conduct, have decided to treat the Act's coverage of them as having been repealed on the authority of an out-of-state district court decision. They have thereby demonstrated an intent to implement voting changes operating to discriminate against minority voters despite the Attorney General's objections.

It is no less true today than it was when the Act and the 1975 Amendments were signed into law, that voting discrimination cannot be effectively prevented by litigation on a case-by-case basis. The process is too inefficient, costly and time-consuming to serve as an effective enforcement mechanism. These cases presently on file in District Courts throughout Texas represent only a small number of the instances where jurisdictions are attempting to implement discriminatory voting changes over the objections of the Attorney General or without submitting them for his evaluation. This amicus has been contacted by citizens of many other municipalities and school districts seeking assistance in resisting proposed changes in

other jurisdictions, including the Cities of Pecos, Luling and Lufkin and the Independent School Districts of Prairie Lea and Ralls, Texas. In each of these instances, local, non-registering political units have proposed changes in voting districts, polling places, or electoral schemes, and, despite objections from the Attorney General, have proceeded to the implementation of objectionable election practices.

The haste of these jurisdictions to resume the old ways of voting discrimination speaks eloquently to the abuses which Congress meant to remedy in drafting Section 5 of the Voting Rights Act. It can be expected that such discriminatory activities will continue if Section 5's provisions are held inapplicable to these and the thousands of other electoral units in the state not conducting voter registration. MALDEF has neither the time, money, nor personnel to enforce the rights of Mexican Americans effectively against this sort of pervasive discrimination which preceeded the Voting Rights Act and which has experienced a resurgence since the Sheffield decision. Neither, we respectfully suggest, does the Justice Department, except through the streamlined procedures of Section 5.

B. Congress intended that the Voting Rights Act have expansive coverage and that Section 5 apply to all political units of states designated under Section 4(b).

In enacting both the 1965 Act and the 1975 Amendments, Congress acted pursuant to the specific constitutional grant of power contained in Section 2 of the Fifteenth Amendment to the Constitution, which provides that:

> "The Congress shall have power to enforce this article[the right to vote] by appropriate legislation."

The Fifteenth Amendment does not, by its terms or by inference, suggest that the right to vote of any citizen may be abridged or diluted in municipal elections, in school district elections or in utility district elections. The right to vote guaranteed by the Fifteenth Amendment was intended to be and is a universal right to which Congress intended to give universal protection in passing the 1965 Act.

Indeed, this Court held in Allen v. State Board of Education, 393 U.S. 544, at 566,(1969), that Congress intended the 1965 Act be given the "broadest possible scope" to reach those enactments "which altered the election law of a covered State in any

minor way." The Court went on to note, "it is significant that Congress chose not to include . . . minor exceptions in Section 5 thus indicating an intention that all changes, no matter how small, be subjected to Section 5's scrutiny."

It would be anomalous to hold, in the light of Congress' broad charter under the Fifteenth Amendment and this Court's prior holding in Allen, that only the largest political subdivisions of a designated State are subject to Section 5's preclearance requirements. Such a holding would require a determination that Congress did not intend to protect all voters in all elections and ignore the guarantee of universal voter equality explicitly stated in the Fifteenth Amendment.

Prior to 1965, Congress had unsuccessfully attempted to use its enforcement powers under the Fifteenth Amendment to protect the rights of minority voters by providing aggrieved voters better access to the judicial process.

Under the Civil Rights Act of 1957[7/], the Civil Rights Act of 1960[8/], and the

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7/ 71 Stat. 634

8/ 74 Stat. 86

Civil Rights Act of 1964[9/], Congress provided the means by which private litigants and the Justice Department could seek judicial relief against the denial of political access to minority voters. However, when Congress studied the voting rights situation prior to the enactment of the Voting Rights Act of 1965, it was apparent that a novel solution to the age old problem of discrimination in the electoral process was needed.

Judicial relief pursued on a case-by-case basis had done little to solve the problem of racially motivated voter discrmination. Case-by-case litigation was too inefficient, costly and fragmented to make any significant impact upon the overwhelming pattern of discrimination against minority voters in certain areas of the country. Moreover, the combined resources of private litigants and the Justice Department were inadequate to do the extremely time-consuming work required in a voting rights case. The Attorney General testified before a House Judiciary Subcommittee that as many as 6,000 hours were spent merely in the factual analysis necessary for the trial of a single voting rights case. In addition, even when the

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9/ 78 Stat. 241

government was successful in litigating against unlawful voting requirements imposed by political jurisdictions in the southern states, that success was often met by defiance and evasion and, in some instances, by switching to discriminatory devices not addressed by the earlier litigation. U.S. Code "Cong. and Admin. News, 89th Cong. 1st Session", pp. 2437, 2441.

Having determined that case-by-case litigation was unavailing, Congress created in the 1965 Act a comprehensive, integrated scheme of administrative remedies requiring, essentially, that any changes in election and voting procedures in states and political subdivisions which met the coverage formula of the Act and were thus designated for coverage, be precleared by the Attorney General. Thus, in those states where there had been a history of voter discrimination, the burden was shifted to the state or political unit of the state to prove that intended changes were non-discriminatory. If they were not precleared, such changes were invalid and did not have the force of law. Unlike previous enforcement attempts, this Congressional effort was a tremendous success and has been hailed as the most effective civil rights

legislation ever passed. Since its enactment the number of Blacks registered in the seven Southern states covered by the Act has nearly doubled and the number of Black elected officials has increased almost tenfold.10/

In January, 1975, the U.S. Commission on Civil Rights submitted a report, "The Voting Rights Act: 10 Years After" to Congress. In its report, the Commission advised the Congress that so-called "language minorities" were suffering discrimination similar to that previously directed at Black Americans and were effectively being denied the right to vote in many areas of the country. Following receipt of this document, Congress held extensive hearings to examine discrimination against language minorities in the electoral process.11/

10/ Senate Hearings Before the Senate Subcommittee on Constitutional Rights, Extension of the Voting Rights Act of 1965, 94th Congress, 1st Session (1975) at 121.

11/ See generally, Senate Hearings Before the Senate Subcommittee on Constitutional Rights, Extension of the Voting Rights Act of 1965, 94th Congress, 1st Session, (1975) [hereinafter "1975 Senate Hearings"]; Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciaries, House of Representatives,

Congress took voluminous testimony concerning the status of minority language voters, primarily in Texas, and the record reveals voting discrimination in Texas on a scale paralleling that which existed in the South prior to the enactment of the 1965 Act.[12/] The evidence before Congress when it considered the Texas experience was not limited to abuses by the State and those jurisdictions which conducted voter resistration. Rather, it considered discriminatory practices emanating from various local governmental entities which demonstrate that pervasive discrimination existed at all levels of Texas electoral politics.

94th Congress, 1st Session (1975) [hereinafter "1975 House Hearings"].

12/ In reaching this conclusion, Congress noted that it required five lawsuits and twenty-five years before the White primary was finally eliminated in Texas in 1953. Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 73 (1932); Grovey v. Townsend, 295 U.S. 45 (1935); Smith v. Allwright, 321 U.S. 649 (1944), and Terry v. Adams, 345 U.S. 461 (1953).

The Congress also noted that it required a Constitutional amendment and a Justice Department lawsuit to eliminate the poll tax in Texas, and that, upon elimination of this device, Texas enacted "the most restrictive voter registration procedures in the nation" to replace the poll tax. Graves v. Barnes, supra., 343 F. Supp. 704 at 731.

During the course of the hearing, various witnesses called Congress' attention to situations which demonstrated the need for federal involvement in the local election process to protect the rights of all citizens. These include:

1. voting irregularities in local elections which discriminated against Mexican Americans; 13/

2. physical intimidation and harassment of minority voters at the polls in local elections; 14/

3. change to a majority run-off, numbered place system for Nacogdoches City elections which was designed to discriminate against minorities. 15/

4. change in election dates for the City of Nacagdoches in order to avoid the impact of the student vote; 16/and

5. the activities of cities and school districts in Corpus Christi, Lufkin and Waco adopting election changes in order to minimize and dilute growing minority voting strength. 17/

13/ 1975 House Hearings 362, 403-404, 522-29, 800, 809-11, 820, 825-826.

14/ Id. at 522. See also 1975 Senate Hearings at 947 and Allee v. Medrano, 416 U.S. 802 (1974).

15/ 1975 House Hearings 400-401.

16/ Id. at 401.

17/ Id.

Congress was also urged during the course of these hearings to provide a mechanism for close monitoring of the electoral process of all political units.

Congress heeded the testimony of the witnesses who urged that expansive coverage of all political units in designated jurisdictions was necessary to end discrimination and the Senate Report clearly indicates its concern that the protections of the Voting Rights Act extend to the cities and school districts of Texas, political entities which do not register voters.

> "Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise their right to vote . . . The at-large structure with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas. And, under state statute, the countless school districts in Texas elect at-large with an option to adopt majority run-off, numbered place system. These structures effectively deny Mexican American and Black voters in Texas political access in terms of recruitment, nomination, election and, ultimately, representation."

[emphasis supplied]

Senate Report No. 94-295, 94th Congress,

1st Session, U.S. Code Congressional and Administrative News p. 793-4.

The statement of Senator Tunney to an expert witness during the hearings on the 1975 Amendments is further illustrative that Congress intended Section 5 to have the broadest possible coverage:

> "You are saying that Section 5 coverage is absolutely essential to guarantee that the Spanish-speaking citizens in various locations in Texas have an opportunity to participate, not only in voting for the government, the U.S. Senate, but have a voice also as it relates to water districts and other levels of legislative responsibility which can have a tremendous impact, economic and otherwise, on the lives of those citizens in Texas; and that the discrimination they suffer will occur in these local elections is perhaps even more subtle than an election for Governor, President or U.S. Senator."

[emphasis supplied]
Id. at 792.

Congress, as a result of those hearings, amended the Voting Rights Act to protect language minorities against voting discrimination, as Blacks in the South had previously been protected under the 1965 Act. The amended Act determines coverage in a manner which parallels the 1965 Act. Section 4(b) sets out the formula for

determining which jurisdictions will be subject to Section 5 coverage and states that these provisions will apply "in any state or in any political subdivision of a state" which satisfies the coverage formula. If an entire state does not meet the formula, "a political subdivision of a state" may be covered if it meets the formula. For this purpose, determination if less than an entire state may be covered, political subdivision is defined in Section 14(c)(2) as follows:

> The term "political subdivision shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

There is no indication that this definition limits the portion of a state which must comply with Section 5 coverage in those cases where the entire state triggers the coverage formula. Rather, the language indicates a Congressional intent that in cases where an entire state is covered, the preclearance requirements of Section 5 are applicable to all voting changes made within the state whether by state legislature, county government, muni-

cipal government or any other unit of the state with duties and responsibilities affecting voting. In such a case, there is no indication that only voting changes by "political subdivision" are to be subjected to preclearance.

Such an analysis of the Act is the only proper and logical construction given the history of voting discrimination on the local level by the jurisdictions Congress intended the Act to cover, and the articulated intent of Congress to protect voters from all discrimination in the electoral process. Congress, in an exercise of its enforcement power would not leave the minority voters of covered jurisdictions subject to unchecked discrimination in the vast majority of elections while attempting to insure their right to vote under the Fifteenth Amendment for "what is done at a local level by local officials often had the most impact upon the ability of these minorities to vote." . . . Id.

CONCLUSION

The Congress, in the face of overwhelming evidence of racial discrimination and voting discrimination practiced on a systematic basis against Mexican Americans in various areas of the country, extended the 1965 Act and amended it to include as a designated state the State of Texas. By that action, the Congress required all political units in the State of Texas to seek the approval of the United States Attorney General prior to changing election practices and laws. In the short time that Texas has been covered by the Act, there have been 2,300 such proposed changes submitted to the Attorney General. Seventy-four percent (74%) of the proposed changes were proposed by non-registering Texas political units. Since the novel, unprecedented and startling opinion of the District Court in the Northern District of Alabama in United States v. Board of Commissioners of Sheffield, local Texas jurisdictions have totally ignored the requirements of securing the Attorney General's preclearance of proposed election changes. Numerous of these jurisdictions have proposed and implemented voting changes which

are clearly designed to continue that pattern of discrimination against Mexican American voters which Congress attempted to cure by the 1975 Amendments. The limited available litigation resources are being utilized to attempt to resist the tide of voter discrimination which threatens to sweep over Texas. History tells us that litigation is not the answer. Only the provisions of the Civil Rights Act and its 1975 Amendments can effectively police the activity of Texas jurisdictions and guarantee the voting rights of Mexican Americans in Texas.

The District Court for the Northern District of Alabama was wrong as a matter of law in Sheffield, as a result of which the rights of Mexican American voters in Texas have been placed at the mercies of local jurisdictions whose prior behavior towards them was such that Congress felt it necessary to pass a law especially to control them.

For the foregoing reasons, and for the reasons set forth in the brief for the United States, the decision below should be reversed.

Dated: August 11, 1977.

Respectfully submitted,

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